

ORIGINAL



Transcript Exhibit(s)

Docket #(s): SW-02361A-08-0609

Arizona Corporation Commission

DOCKETED

MAY 22 2012

DOCKETED BY

DM

Exhibit #: BHOA6, BHOA7, W1-W7, BMSC1-

BMSC5, -

Part 1 of 2

DOCKET CONTROL
CORP COMMISSION

2012 MAY 22 P 2:47

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BEFORE THE ARIZONA CORPORATION COMMISSION

2012 MAR -6 P 4: 20

COMMISSIONERS

GARY PIERCE, Chairman
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

CLERK OF THE COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE
APPLICATION OF BLACK MOUNTAIN
SEWER CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

NO. DOCKET NO. SW-02361A-08-0609

STIPULATION OF FACTS

The Boulders Homeowners' Association ("BHOA") and Black Mountain Sewer Corporation ("Black Mountain" or "Company") (collectively, the "Stipulating Parties") by and through undersigned counsel, submit the following Stipulation of Facts. The Stipulating Parties believe that the facts included herein are undisputed. This Stipulation of Facts is being offered in lieu of testimony from BHOA.

1. In the midst of the Boulders residential community sits the Boulders Wastewater Treatment Plant (the "Treatment Plant") that was originally constructed in 1969.

2. The Treatment Plant sits less than 100 feet from three homes, and within 1,000 feet of the Treatment Plant there are 200-300 homes and dining and conference facilities of the Resort.

3. The Treatment Plant is permitted to treat 120,000 gallons per day of wastewater.

4. The Treatment Plant treats about 20 percent of the Company's total wastewater flows.

EXHIBIT

tabbies

BHOA 6
ADMITTED

1 5. Complaints have been received that odors from the Treatment Plant are
2 noticeable by and objectionable to Boulders residents. Such residents have also
3 complained that odors from the Treatment Plant can be irritating and sometimes interfere
4 with residents' opportunity to leave their windows open to enjoy fresh air in the
5 immediate vicinity of the facility. Residents of the Boulders have complained to the
6 Boulders' community manager about odors from the Treatment Plant.

7 6. Complaints from residents regarding odors from the Treatment Plant appear
8 more frequent from October through April.

9 7. Since Decision No. 71865 was issued, the Company has received and
10 logged 23 odor complaints from customers (including a lawsuit filed in Maricopa County
11 Superior Court by a resident living adjacent to the Treatment Plant).

12 8. A portion of the north Boulders golf course is adjacent to the Treatment
13 Plant. Golfers playing the north Boulders golf course have also complained at times of
14 noticeable odors as they pass by the Treatment Plant.

15 9. At times, noises from the operation of the Treatment Plant are noticeable
16 from homes within approximately 400 feet of the Treatment Plant.

17 10. There is periodic traffic (service vehicles, pumper trucks, sub-contractor
18 vehicle parking, dumpsters, etc.) in the Boulders community associated with the
19 Treatment Plant's operations.

20 11. The Treatment Plant is operated in full compliance with all applicable law
21 and industry standards. In addition, BMSC has taken steps to minimize odors and noises
22 from operation of the facility, including, among many other improvements, the
23 installation of an odor-scrubber.

24 12. It is not feasible to completely eliminate odor and noise from the operation
25 of the Treatment Plant.

13. The issue is one of location rather than anything BMSC has done wrong or failed to do.

14. The Treatment Plant complies with the applicable setback requirements. A new facility of the same size built today that had no odor, noise or aesthetic controls would require a setback of at least 500 feet, and a new facility with full noise, odor and aesthetic controls would require a minimum setback of at least 100 feet. The Treatment Plant has partial noise, odor and aesthetic controls.

15. The Company has an Effluent Delivery Agreement with the Resort (the “Effluent Agreement”) to sell to the Resort all of the effluent treated at the Treatment Plant for irrigation of the Resort’s golf courses. The Resort obtains approximately ten percent of its irrigation water from the Treatment Plant.

16. More than 500 Black Mountain customers, including both residents in the Boulders and others, have expressed support to close the Treatment Plant.

17. Black Mountain and the Resort have been unable to reach agreement for the termination of the Effluent Agreement at little or no cost to the Company.

Dated this 2nd day of March, 2012.

RIDENOUR, HIENTON, & LEWIS, P.L.L.C.

By Scott S. Wakefield
 Scott S. Wakefield
 201 North Central Avenue, Suite 3300
 Phoenix, Arizona 85004-1052
 Attorneys for Boulders' Homeowners'
 Association

///

///

1 FENNEMORE CRAIG, P.C.

2
3 By Jay L. Shapiro

4 3003 North Central Avenue, Suite 2600
5 Phoenix, Arizona 85012
6 Attorneys for Black Mountain Sewer
7 Corporation

8 ORIGINAL and 13 copies filed
9 this 6th day of March, 2012 with:

10 Docket Control
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, Arizona 85007

14 COPY of the foregoing hand-delivered
15 this 6th day of March, 2012, to:

16 Janice Alward, Chief Counsel
17 Legal Division
18 Arizona Corporation Commission
19 1200 W. Washington St.
20 Phoenix, Arizona 85007

21 Steven M. Olea, Director
22 Utilities Division
23 Arizona Corporation Commission
24 1200 W. Washington St.
25 Phoenix, Arizona 85007

26 Dwight Nodes
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Robin Mitchell
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

///

///

1 COPY of the foregoing mailed/mailed
2 this 6th day of March, 2012 to:

3 Jay L. Shapiro
4 Fennemore Craig, PC
5 3003 N. Central Ave., Suite 2600
6 Phoenix, Arizona 85012-2913
7 Attorneys for Black Mountain Sewer Corporation

8 Jodi Jerich, Director
9 Residential Utility Consumer Office
10 1110 W. Washington St., Suite 220
11 Phoenix, Arizona 85007-2958

12 Michael W. Wright
13 Sherman & Howard, LLC
14 7033 East Greenway Parkway, Suite 250
15 Scottsdale, Arizona 85254
16 Attorneys for Town of Carefree

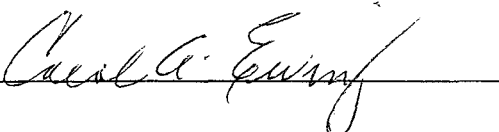
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23 Ryley Carlock & Applewhite, P.A.
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25 Phoenix, Arizona 85004-4417
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Scottsdale, Arizona 85254
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7223 E. Carefree Drive
P.O. Box 2506
Carefree, Arizona 85377

M.M. Schirtzinger
34773 N. Indian Camp Trail
Scottsdale, Arizona 85266



WASTEWATER TREATMENT PLANT CLOSURE AGREEMENT

This WASTEWATER TREATMENT PLANT CLOSURE AGREEMENT (this "Agreement") is made this 17th day of September, 2009, by and between the BOULDERS HOME OWNERS ASSOCIATION, a non-profit Arizona corporation ("BHOA") and BLACK MOUNTAIN SEWER CORPORATION, an Arizona public service corporation ("BMSC") (individually, a "Party" and collectively, "Parties"), for the purposes and consideration set forth hereinafter.

RECITALS

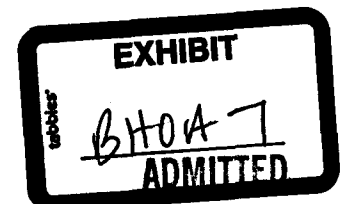
A. BMSC is a public service corporation as defined in Article 15, Section 2 of the Arizona Constitution. BMSC owns and operates certain wastewater collection, transmission and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "ACC") authorizing BMSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale.

B. BHOA is an association of 332 home and property owners in the northern portion of the area known as the Boulders community in North Scottsdale and Carefree, Arizona. A map depicting the general location of the Boulders community is attached hereto as Exhibit A to this Agreement. The Boulders community also includes the Boulders Resort and Club (the "Resort"). The Resort is located in north Scottsdale and includes a hotel, clubhouse, pool, tennis courts, various landscaped areas, two 18-hole championship golf courses, and numerous residential units. BHOA owns and controls the common areas and BHOA and its members are customers of BMSC, as the entire Boulders community is located within BMSC's certificated service territory.

D. At the present time, BMSC operates a single wastewater treatment plant known as the Boulders East Plant (the "Plant") within the Resort. The Plant currently has a permitted capacity of 120,000 gallons per day ("gpd") and a maximum treatment capacity of 160,000 gpd. BMSC currently treats an average 120,000 gpd of wastewater and delivers all effluent from the Plant to the Resort pursuant to an Effluent Delivery Agreement, dated March 2001. The remainder of BMSC's wastewater is delivered to the City of Scottsdale for treatment, pursuant to a Wastewater Treatment Agreement, dated April 1, 1996 ("Scottsdale Agreement").

E. As required by ACC Decision No. 69164 (December 5, 2006), BMSC has made substantial improvements to its wastewater collection systems. These improvements have been successful in addressing odors from the Company's collection system. However, fugitive odors continue to be a problem at the Plant, as do intermittent noises and traffic from an assortment of trucks and related vehicles servicing the Plant due primarily to its location within the BHOA and in the immediate proximity of residential properties. Because these odors and noises remain largely within the Plant's normal operating parameters, the parties believe that the only viable remedy to remove all odors and noises/truck traffic from the surrounding community is closure of the Plant. This is true, despite the parties' agreement that the Plant is being operated by

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BMSC in compliance with all applicable law and regulation, and that such utility property is a used and necessary asset of BMSC.

F. BHOA represents that the closure of the Plant is supported by the Boulders community, the Town of Carefree, and the City of Scottsdale, all of whom, in addition to BMSC's customers, have an interest in the closure of the Plant. Therefore, in order to pursue closure of the Plant, the Parties desire to enter into an agreement setting forth the terms and conditions under which BMSC will close the Plant and clarify each Party's rights and obligations with respect to that closure and the associated regulatory and ratemaking approvals.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals. Each of the recitals set forth above are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. Closure of the Plant. BMSC agrees to close the Plant subject to the terms and conditions set forth hereinafter. As used herein, the terms "closure" and "close" in reference to the Plant shall mean the termination of the wastewater treatment operations at the Plant, removal of the physical structure of the Plant and the associated equipment that is not necessary for the continued operation of the wastewater collection and transportation systems and remediation and restoration of the Plant's associated property as required by applicable law and regulation.

a. Conditions Precedent to Plant Closure. BMSC agrees to commence the closure of the Plant if the following conditions are satisfied:

i. Downstream Collection System Line Capacity. The downstream collection system line from the Plant to the City of Scottsdale must have sufficient capacity to support an additional 120,000 gpd flow of wastewater. If engineering evaluations conducted by BMSC or its agents determine that the downstream collection system line lacks sufficient capacity to support the extra flow, BMSC agrees to upgrade the system to provide sufficient capacity for additional flow if it determines, in its discretion and in consultation with BHOA, such an upgrade is not prohibitively expensive for BMSC and is in the best interests for BMSC and its ratepayers.

ii. Flow-through to the City of Scottsdale. Engineering evaluations conducted by BMSC or its agents must demonstrate that the Plant's intake and outflow lines can be connected to permit flow-through of wastewater to the City of Scottsdale's wastewater treatment system in the same or similar manner as BMSC currently delivers flows from its customers to the City of Scottsdale system under the Scottsdale Agreement. BMSC agrees to modify the Plant's system to permit such flow-through if it determines, in its discretion and in consultation with BHOA, such an upgrade is not prohibitively expensive for BMSC and is in the best interests for BMSC and its ratepayers.

BSC

iii. Wastewater Treatment Agreement with the City of Scottsdale. BMSC must successfully negotiate the purchase of 120,000 gpd of additional wastewater treatment capacity to treat the flows currently being treated at that Plant. In addition, BMSC must sign an amendment to the Scottsdale Agreement that (1) extends BMSC's right to purchase additional capacity beyond December 21, 2016; (2) states that BMSC's right to capacity shall survive the termination of the Scottsdale Agreement; (3) states that the City of Scottsdale cannot terminate the Scottsdale Agreement if BMSC closes the Plant; and (4) provides BMSC the long-term right to purchase additional capacity at market rates.

iv. Effluent Agreement with the Resort. BMSC currently has an agreement with the Resort which requires BMSC to deliver all effluent generated at the Plant to the Resort through March 2021. In the agreement, BMSC covenanted to continue to operate the Plant and to not reduce the amount of effluent produced by the Plant. BMSC must sign an agreement with the Resort whereby the Resort agrees to allow the termination of the Effluent Agreement at no or limited cost to BMSC.

v. Approval of Plant Closure. BMSC must seek and obtain all the necessary local, county, state, and/or federal approvals for the closure of the Plant.

vi. ACC Approval of Cost Recovery for Plant Closure. ACC must approve a cost recovery mechanism that permits BMSC to recover a return on and of the capital costs of closure, which costs include, without limitation, the costs of procuring additional capacity from the City of Scottsdale, the costs of engineering and other analyses necessary to complete the closure, any system upgrades required as a result of the closure and/or the delivery of the flows previously treated at the Plant to the City of Scottsdale. BMSC must also be authorized recovery of any reasonable costs of reaching agreement with the BHOA, the City of Scottsdale and the Resort as required to fulfill the terms of this Agreement, including, without limitation, the costs of obtaining all necessary approval from the ACC, including rate case expense. BMSC shall have no obligation under this Agreement if the ACC does not approve such cost recovery mechanism as acceptable to BMSC in its sole discretion.

b. Termination of Operations at the Plant. BMSC agrees to use all commercially reasonable efforts to complete termination of its operation of the Plant within 15 months of the satisfaction of conditions listed in Sections 2(a) (i) – (vi), subject to government approvals and the terms and conditions set forth hereinafter.

c. Removal of Plant Structure and Associated Equipment. After terminating its operations, BMSC agrees to remove the Plant's physical structure from the Plant Property. The "Plant Property" includes the 1.03 acres of the current Plant site. BMSC agrees to remove any associated equipment or structures from the property that are not necessary for the continued operation of its wastewater collection or transportation systems.

d. Remediation of the Plant Property. BMSC agrees to be responsible for the proper management, handling, transportation, storage and disposal of any hazardous substances generated by BMSC's activities on the Plant Property. BMSC is responsible for remediating the hazardous substances directly generated by its activities on the Plant Property to the level required by applicable laws, if such remediation is required by an applicable law. The term

"Hazardous Substances" shall mean any substance, material, pollutant, contaminant, or waste, whether solid, gaseous or liquid, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, and that is regulated, defined, listed or included in any Applicable Laws, including, without limitation, asbestos, petroleum, petroleum or fuel additives, polychlorinated biphenyls, urea formaldehyde, or waste tires.

e. Restoration of the Plant Property. BMSC agrees to restore the surface and subsurface of the Plant Property to a safe and stable condition. Further, upon completing closure of the Plant structure, BMSC and its agents shall remove from the Plant Property all tools, excavated material, personal property, rubbish, waste and surplus materials in connection with the closure and/or previous operation of the Plant and leave the Plant property free and clear from all obstructions and hindrances until such time that residential structures may be constructed on the site.

3. Ownership of Plant Property. BMSC will have full and complete ownership of the Plant Property after the completion of the closure, remediation and restoration. Within 60 days of BMSC completing removal of the Plant's physical structure from the Plant Property, BHOA agrees to contribute or work with BMSC to enable transfer of the 0.2+ acres of land adjacent to the Plant to BMSC to enable development of the Plant Property. Thereafter, BMSC will determine, in its discretion, the best time to market the residential property so as to maximize its value, subject to local laws and rules applicable to development within the BHOA. BMSC further agrees to seek ratemaking treatment of such gain that would result in an equal sharing of the gain between BMSC's shareholders and ratepayers, and BHOA agrees to provide support for such ratemaking treatment of any gain of the Plant Property. Gain on sale shall be that amount over and above BMSC's basis in the Plant Property. The gain on sale shall exclude the proceeds from the 0.2+ acres "contributed" by BHOA. All proceeds from the sale of the 0.2 acres "contributed" by BHOA shall be allocated towards reducing the rate base and costs of the closure of the Plant

4. Costs of the Closure of the Plant. BMSC will be responsible for all costs related to the closure of the Plant, notwithstanding BHOA's contribution discussed in Paragraph 3.

5. Covenants.

- a. BMSC covenants and agrees to negotiate in good faith and with promptness the modifications to the agreements contemplated in Sections 2(a)(iii) and 2(a)(iv) above.
- b. BHOA covenants and agrees to lend assistance and support as requested by BMSC in relation to BMSC's efforts to close the Plant, including assisting and supporting BMSC as requested in relations to BMSC's efforts with the City of Scottsdale and the Resort. BHOA specifically covenants to assist and support BMSC, publicly and privately, in its efforts before the ACC to obtain recovery of its costs incurred under this Agreement, including rate case expense, as contemplated in Section 2.a.iv above. BHOA agrees and acknowledges that recovery of a return on and of the capital investments and the expenses incurred by BMSC and/or its parent company in reaching and

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obtaining the necessary approvals of the Agreement and thereafter closing the Plant will likely result in the need for higher utility rates by BMSC.

- c. Both Parties covenant and agree to not interfere with or cause an unreasonable delay in the removal of the Plant.

6. Risk and Indemnification. Subject to the limitations set out herein, BMSC hereby assumes any and all risks associated with the Plant's closure or other actions to be conducted by BMSC pursuant to this Agreement. BHOA shall not seek indemnification from BMSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines, liabilities or other losses arising out of any breach or default in the performance of this Agreement by BHOA.

7. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, floods, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, unavailability of or delays in receipt of materials, supplies or equipment, or any other cause, whether of similar nature, not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with reasonable diligence to correct or eliminate the condition causing the force majeure and do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

8. Term of Agreement. This Agreement shall terminate when the Parties have performed all of their obligations under this Agreement, but no earlier than the time BMSC has obtained favorable ratemaking for the costs of the closure.

9. Termination of Agreement.

a. Termination for Breach. Either Party may initiate proceedings for termination of this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 12, below.

b. Failure of Conditions to Plant Closure. If any of the conditions listed in Paragraphs 2(a) (i) – (vi) are not satisfied, either Party may initiate proceedings for termination of this Agreement. In such event, the Party contending that a failure of a condition has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 11, below.

10. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express

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Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BMSC to: Greg Sorensen
Black Mountain Sewer Corporation dba Liberty Water
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85392

With a copy to: Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012

If to BHOA to: Ted Wojtasik
Rossmar & Graham
9362 E. Raintree Drive
Scottsdale, AZ 85260

With a copy to: Scott Wakefield
Ridenour, Hinton & Lewis
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85004

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

11. Dispute Resolution. The Parties agree to use good faith efforts to resolve, through negotiation, disputes arising under this Agreement. If the Parties are unable to resolve the dispute within sixty (60) days, a Party that still believes the dispute requires resolution may pursue mediation or arbitration or commence litigation in a court or other tribunal of appropriate jurisdiction.

12. Attorneys' Fees. In the event either Party hereto finds it necessary to employ legal counsel or to bring an action at law or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be paid its reasonable attorneys' fees and costs, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a proceeding for the purposes of this paragraph.

13. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

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14. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement. Each Party shall cooperate with and provide reasonable assistance to the other party to obtain all required approvals and consents necessary to effectuate and perform this Agreement.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

16. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

17. Construction. The terms and provisions of this Agreement represent the results of negotiations between BMSC and BHOA, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BMSC and BHOA each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement. This Agreement represents the Parties' mutual desire to compromise and settle disputed issues. The acceptance by any Party of a specific element of this Agreement shall not be considered precedent for acceptance of that element in any other context. Nothing in this Agreement shall be construed as an admission by any Party as to the reasonableness or unreasonableness or lawfulness or unlawfulness of any position previously taken by any other Party. No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Party shall offer evidence of conduct or statements made in the course of negotiating this Agreement before the Commission, any other regulatory agency, or any court. The invalidity of any provision of this Agreement shall in no way affect any other provision hereof.

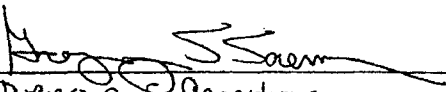
18. Interpretation. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BMSC and BHOA with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BMSC and BHOA and sets forth the entire agreement between the parties with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument, letter or other agreement executed in connection with or furtherance of this Agreement, the term, provision, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

PSS

19. Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, BMSC and BHOA have executed this Wastewater Treatment Plant Closure Agreement as of the date and year first written above.

BLACK MOUNTAIN SEWER CORPORATION
An Arizona corporation.

By 
Its Director of Operations

BOULDERS HOME OWNERS ASSOCIATION
A non-profit Arizona corporation

By _____
Its _____

19. Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, BMSC and BHOA have executed this Wastewater Treatment Plant Closure Agreement as of the date and year first written above.

BLACK MOUNTAIN SEWER CORPORATION
An Arizona corporation.

By _____
Its _____

BOULDERS HOME OWNERS ASSOCIATION
A non-profit Arizona corporation

By [Signature]
Its President

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE, Chairman
4 SANDRA D. KENNEDY
5 PAUL NEWMAN
6 BOB STUMP
7 BRENDA BURNS

Docket No. SW-02361A-08-0609

7 IN THE MATTER OF THE APPLICATION
8 OF BLACK MOUNTAIN SEWER
9 CORPORATION, AN ARIZONA
10 CORPORATION, FOR A
11 DETERMINATION OF THE FAIR VALUE
12 OF ITS UTILITY PLANT AND PROPERTY
13 AND FOR INCREASES IN ITS RATES
14 AND CHARGES FOR UTILITY SERVICE
15 BASED THEREON

13 **Direct Testimony**
14 **of**

15 **Susan Madden**

16 **on behalf of Wind P1 Mortgage Borrower, L.L.C.**

17 **d/b/a The Boulders Resort and Golden Door Spa**

18 **March 16, 2012**



Executive Summary

Susan Madden is the Director of Finance for The Boulders Resort and Golden Door Spa (the "Resort"). Ms. Madden describes the Resort, the two golf courses, and the Resort's two golf course water supply agreements, including the Effluent Delivery Agreement with Black Mountain Sewer Corporation ("Black Mountain"), and the RWDS Agreement with the City of Scottsdale. The Resort is a destination golf resort, and the Black Mountain water supply is critical to maintaining the golf courses.

As a member of the Resort's management team, Ms. Madden describes the Resort's position regarding the potential closure of the Black Mountain treatment plant, the history of the Resort's involvement, and the Resort's efforts to find a replacement water supply. The Resort identified physically available water supplies, legal restrictions on their use, and estimated potential costs. The Resort has been unable so far to find a replacement water supply that is available and acceptable from a cost standpoint.

1 **Q1. Please state your name, address and occupation.**

2 A1. My name is Susan Madden. My business address is 34361 N. Tom Darlington Drive,
3 Carefree, Arizona. I am employed by Waldorf Astoria LLC, the manager of The
4 Boulders Resort and Golden Door Spa (the "Resort"). The Resort is owned by Wind P1
5 Mortgage Borrower, L.L.C. I am the Director of Finance for the Resort.

6 **Q2. Please describe the purpose of your testimony.**

7 A2. The purpose of my testimony is to describe the Resort and, at least in part, describe why
8 water provided to the Resort is critical to the Resort's business. As a member of the
9 Resort's management team, I have been directly involved in the Resort's search for
10 replacement water supplies for the water that is currently provided to the Resort by Black
11 Mountain Sewer Company ("Black Mountain"). In addition to my testimony, Tom
12 McCahan, the Director of Club Operations, and Dean Hunter, the Golf Course
13 Superintendent, will testify regarding their knowledge of the Resort's need for the current
14 water supply for the golf courses and their efforts to find replacement supplies and/or
15 reduce water use at the courses as an alternative to replacement.

16 **Q3. Please describe The Boulders Resort and Golden Door Spa.**

17 A3. The Resort consists of a hotel with 160 high-end casitas, meeting spaces, a spa, tennis
18 courts, four swimming pools, and seven restaurants. Adjacent to the Resort there are
19 privately-owned villas and hacienda units. The Resort also has two 18-hole
20 championship golf courses, the North Course and the South Course. The Resort is
21 located in the foothills of Black Mountain near Carefree and the two golf courses are
22 located in areas that include small hills and large granite boulder formations. The Resort
23 is branded as one of Hilton's Waldorf Astoria hotels. The Resort employs approximately
24 550 people, and we estimate that it annually generates revenues of \$40 million for the
25 surrounding communities, including the Towns of Cave Creek, Carefree, and the City of
26 Scottsdale.

1 **Q4. You have heard customer comments regarding smells coming from the treatment**
2 **plant, right?**

3 A4. Yes. I am aware of the complaints. The Resort has been and still is quite concerned
4 about the complaints and the odors. We have Resort visitors that regularly golf near the
5 treatment plant, and many local golf club members, so their satisfaction with their golf
6 experiences is very important to us.

7 **Q5. You work at the Resort. Have you ever witnessed odors?**

8 A5. Yes. I have smelled odors from time to time emanating from the treatment plant,
9 especially when I am golfing near the plant.

10 **Q6. Wouldn't it be better for everyone if the treatment plant is removed?**

11 A6. If we can find an acceptable solution to address the Resort's golf course replacement
12 water supply needs, yes. However, as I think we have all learned, there is no easy answer
13 on this one.

14 **Q7. Please describe how the two golf courses are utilized as part of the Resort's business.**

15 A7. The Resort is a destination golf resort. Many visitors come for the primary purpose of
16 golfing. Both of the Resort's golf courses are world class courses that are designed and
17 operated to compete with courses at other luxury properties, both in the United States and
18 internationally. Our Resort course is repeatedly ranked as one of the nation's top golf
19 courses by GOLF Magazine and Travel and Leisure Magazine. One of the 18-hole golf
20 courses is dedicated primarily to the use of Resort customers. The other 18-hole golf
21 course is dedicated primarily for the use of members of The Boulders Club, a private golf
22 club whose members include some members of the Boulders Homeowners Association.
23 If the Resort is not able to maintain the golf courses in world-class condition, it will have
24 an impact on the Resort's ability to continue attracting visitors and golf club members.

25 **Q8. Please describe the water supplies used to maintain the golf course turf and**
26 **landscaping.**

1 A8. The Resort has two contracts through which it obtains its golf course non-potable water
2 supplies. The Resort has an Effluent Delivery Agreement with Black Mountain (attached
3 as Exhibit A) that entitles the Resort to purchase all effluent generated by operation of the
4 Boulders East Plant or a new wastewater treatment facility constructed by Black
5 Mountain through March 2021. The quantity of water typically purchased under this
6 agreement is approximately 130 to 135 acre-feet per year. The parties agreed that the
7 cost for this water is set by the Commission, and that amount is currently \$0.460510 per
8 thousand gallons (approximately \$150 per acre-foot). The second water supply
9 agreement is between Wind P1 Mortgage Borrower, LLC and the City of Scottsdale and
10 includes the Pipeline Capacity Agreement dated February 3, 1992, the First Amendment
11 to Pipeline Capacity Agreement No. 920004 dated December 19, 1994, and the Second
12 Amendment to Agreement No. 920004 Pipeline Capacity Agreement dated April 1, 2008
13 (collectively, the "RWDS Agreement"). The RWDS Agreement authorizes the Resort to
14 use 1.25 MGD of capacity in the City's Reclaimed Water Distribution System ("RWDS")
15 pipeline. A copy of the RWDS Agreement is attached as Exhibit B. The current rate for
16 RWDS water is \$1.3510 per 1000 gallons (approximately \$440 per acre-foot). The
17 annual quantity of water typically purchased under the RWDS Agreement is
18 approximately 740 acre-feet per year.

19 **Q9. What is the RWDS pipeline?**

20 A9. The RWDS pipeline is a 20 MGD pipeline owned by the City of Scottsdale that
21 transports a mixture of reclaimed water and Central Arizona Project water from the City's
22 wastewater treatment plant to 23 golf courses pursuant to pipeline capacity agreements
23 between the City and users.

24 **Q10. The Resort became aware at some point that Black Mountain Sewer Corporation**
25 **was proposing to close the Boulders wastewater treatment plant?**

26 A10. Yes, the Resort discovered that Black Mountain was thinking of closing the plant before
27 the Arizona Corporation Commission's final decision was made in the rate case. We
28

1 were obviously very concerned about the prospect of losing that portion of the water
2 supply, but understood at that time that the treatment plant would not be closed until
3 Black Mountain made an agreement with the Resort regarding the Effluent Delivery
4 Agreement.

5 **Q11. Was the Resort a party to the settlement agreement in the rate case?**

6 A11. No. The Resort was not a party to the settlement agreement. Although the Resort is
7 aware of the odor issues that have been experienced in the neighboring properties
8 (including at times the Resort property), the situation has improved somewhat, and the
9 Resort disagrees that the treatment plant should be closed until the Resort is able to
10 secure a replacement water supply on acceptable terms that recognize its contractual
11 rights to continued water deliveries under the Effluent Delivery Agreement.

12 **Q12. How did the Resort respond to the news that Black Mountain was proposing to close**
13 **the treatment plant?**

14 A12. Well, as you can imagine, we had discussions with Black Mountain about the proposal.
15 When the idea of plant closure was presented to us, it was presented in a manner that
16 indicated the plant closure was going to occur by order of the Commission, and the
17 Resort could not do anything about it. We immediately starting trying to figure out how
18 the Resort would cope without the water provided by the treatment plant. After our
19 attorney conducted further research in the ACC's docket and reviewed the actual
20 settlement agreement terms, however, we learned that closure was actually proposed as
21 part of a settlement agreement between Black Mountain and BHOA, and that the Resort
22 would be protected through the condition in the agreement requiring that Black Mountain
23 reach an agreement with the Resort to terminate the Effluent Delivery Agreement. Our
24 attorney approached Black Mountain's attorney in approximately February 2010 about
25 discussing a resolution, but there was not much desire to meet until the Commission
26 considered the settlement agreement.

1 **Q13. Did Black Mountain eventually meet with the Resort to discuss the closure**
2 **proposal?**

3 A13. Yes. After the Recommended Order and Opinion was issued in the rate case, Les
4 Peterson, the Boulders Homeowners Association's ("BHOA's") president at the time,
5 organized a meeting between representatives of BHOA, Black Mountain, and the Resort
6 on September 26, 2010, to discuss the situation. At that meeting, Black Mountain made it
7 clear that Black Mountain would not pay anything for termination of the Effluent
8 Agreement unless the payment could be recovered in rates. Given that sentiment, the
9 parties then focused on finding a way to replace the treatment plant water supply and
10 potential funding sources.

11 **Q14. Why didn't the Resort request to intervene in the earlier rate case once it learned**
12 **what was happening?**

13 A14. By the time we discovered what was really going on with the settlement agreement, it
14 was late in the rate case, and it was also clear that the closure could not move forward
15 until Black Mountain addressed its contractual obligations under the Effluent Delivery
16 Agreement with the Resort. The Resort felt it could work out those issues directly with
17 Black Mountain.

18 **Q15. Why did the Resort request to intervene last summer?**

19 A15. The Resort intervened because BHOA was threatening to go back to the Commission and
20 use the Commission's authority in an attempt to terminate Black Mountain's Effluent
21 Delivery Agreement obligations to the Resort. The Resort wanted the opportunity to
22 present evidence regarding the Resort's interests that was not provided to the
23 Commission by the parties in this case before the Black Mountain/BHOA settlement
24 agreement was adopted by the Commission. The Resort also regrets how its role in
25 negotiations regarding potential plant closure have been presented by other parties, and
26 wants the opportunity to provide evidence to the Commissioners of its significant efforts
27 to find a resolution.
28

1 **Q16. What alternatives were considered by the Resort to meet the BHOA objectives?**

2 A16. We have considered a number of alternatives, both in the group meetings that we held
3 with the BHOA and Black Mountain, and also internally with the Resort's advisors. I'll
4 describe the alternatives generally, but Tom McCahan and Dean Hunter will provide
5 additional detail in their direct testimony. Generally, there were three categories of
6 alternatives considered. First, we considered whether the Resort could simply operate
7 without the treatment plant's water supply by implementing further conservation
8 measures or even possibly not overseeding one or both courses during the winter months.
9 Second, we considered replacement water supplies. Third, we considered possible
10 replacement of the treatment plant with a new plant near the Resort.

11 **Q17. How many more group meetings were held that included representatives of the**
12 **BHOA and Black Mountain?**

13 A17. We had two large group meetings with BHOA and Black Mountain, with periodic written
14 correspondence, phone calls and side meetings between various parties. In addition to
15 meeting with the large group, the Resort met separately with Black Mountain, the Town
16 of Carefree once, the City of Scottsdale on at least two occasions, and had numerous
17 meetings with Resort staff and our hired consultants regarding potential solutions.

18 **Q18. What physically available water supplies were identified in the area of the Resort?**

19 A18. We looked at groundwater options. The Boulders is located in the foothills of mountains,
20 so there is not much groundwater available in this area. We identified one well in
21 Carefree referred to as Carefree Well #6 that we believe would have enough capacity to
22 replace the water we currently purchase from Black Mountain. Well #6 is a high-arsenic
23 well currently used by another golf course that could be used if an agreement could be
24 reached with the well owner. The Resort would need to construct a new pipeline to
25 transport water from Well #6 to the golf course irrigation lake. However, the Resort's
26 RWDS Agreement with Scottsdale prohibits the use of groundwater on most of the
27 Resort's golf course areas.
28

1 **Q19. Are there any other physically available supplies?**

2 A19. Yes. We looked at whether we could purchase more RWDS water from the City of
3 Scottsdale. Tom McCahan will testify about this alternative, although I am also familiar
4 with the RWDS discussions, including the possibility of an exchange of pipeline capacity
5 with Desert Mountain. We also had conversations with the City of Scottsdale regarding
6 whether potable water could be made physically available through existing potable water
7 distribution pipes to the Resort that would be sufficient to replace the treatment plant
8 supply. However, City staff members have informed the Resort that the City is unwilling
9 to provide potable water except on a temporary, emergency basis. Use of potable water,
10 if ever allowed, could require the payment of a one-time water resources development fee
11 for the amount of water committed, and the rate would be the City's potable rate.

12 **Q20. Are there any other physically available supplies?**

13 A20. Not that I am aware of. We looked at the new Cave Creek wastewater treatment plant on
14 Carefree Highway, which would require construction of an approximately four-mile-long
15 pipeline through rocky terrain. But we learned the treatment plant does not have
16 available effluent, and will not have any for the foreseeable future.

17 **Q21. You also mentioned considering a new wastewater treatment plant? What was**
18 **considered there?**

19 A21. First, let me say that I am not an expert in wastewater treatment plants. We understood
20 from inquiries, however, that it should be technically possible to install a small new
21 efficient wastewater plant that would be fully enclosed and that could partially treat
22 wastewater before sending a more concentrated waste stream to Scottsdale for further
23 treatment. The new plant could still send treated water to the Resort for use at the golf
24 courses. This was an intriguing idea. In order to investigate this option, we conferred
25 with Black Mountain regarding the possibility of the Resort providing a nearby parcel of
26 land it owns to Black Mountain for such a new plant. I will leave it to Black Mountain to
27 explain their thoughts on this alternative.

1 **Q22. Has the Resort decided not to pursue any of these alternatives further?**

2 A22. No, the Resort is still considering options, but has been unable so far to find a
3 replacement water supply that is available and acceptable from a cost standpoint. The
4 Resort also expects Black Mountain to contribute financially to a solution if the contract
5 would be terminated prior to March 2021.

6 **Q23. Does this conclude your direct testimony?**

7 A23. Yes.

A

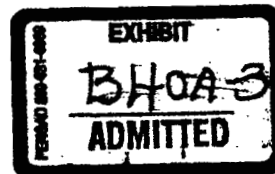


BLACK MOUNTAIN SEWER CORPORATION

VIA FACSIMILE: 480-488-9623

4 May, 2001

Robert Hanus
President
WET Inc. (Western Environmental Tech.)
P.O. Box 4752,
Cave Creek, Arizona, 85331



RE: Effluent Delivery Agreement

Dear Robert:

As requested, please find attached Effluent Delivery Agreement for the Black Mountain Sewer Corporation as requested. Please read carefully and ensure you understand in detail this agreement and that you govern yourself and your company in accordance with this agreement at all times. If at any time you find that you cannot meet the conditions outlined in this agreement, please ensure that you contact myself or Graham Symmonds immediately or in anticipation of such an event.

Sincerely,

BLACK MOUNTAIN SEWER CORPORATION

Trevor T. Hill P.Eng
President

cc: Graham Symmonds - VP Engineering - BMSC

Document6

One Carefree Place
Box 731
Suite A2, 36800 N. Sidewinder Dr.
Carefree, AZ, 85377

Telephone: 480-488-4152 Facsimile: 480-488-8573

EFFLUENT DELIVERY AGREEMENT

THIS EFFLUENT DELIVERY AGREEMENT (this "Agreement") is made this ____ day of March, 2001 between THE BOULDERS CAREFREE SEWER CORPORATION, an Arizona corporation ("BCSC"), and BOULDERS JOINT VENTURE, an Arizona general partnership ("User"), sometimes referred to herein as a "Party" or collectively as the "Parties," for the purposes and consideration set forth hereinafter.

RECITALS:

A. BCSC owns and operates certain wastewater collection and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "Commission") authorizing BCSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale, Arizona, including the sale of treated effluent ("Effluent") resulting from the operation of BCSC's treatment facilities.

B. User owns and operates a destination resort in north Scottsdale commonly known as The Boulders Resort and Club ("the Resort"). The Resort includes a hotel, clubhouse, pool, tennis courts, various landscaped areas and two 18-hole championship golf courses (the "Golf Courses"), and is located within BCSC's certificated service territory.

C. At the present time, BCSC operates a single wastewater treatment plant known as the Boulders East Plant. This treatment plant currently has a permitted capacity of 120,000 gallons per day ("gpd"). BCSC intends to seek approval to increase the treatment plant's permitted capacity to 150,000 gpd. The remainder of BCSC's wastewater is delivered to the City of Scottsdale for treatment.

D. BCSC currently delivers all of the Effluent produced by the Boulders East Plant to the Resort, pursuant to that certain Agreement, dated March, 18, 1986, as amended by that certain First Amendment to Agreement, dated March 18, 1996. The Resort utilizes the Effluent for

irrigation and maintenance of the turf, trees, shrubs and other landscaping at the Golf Courses, for the filling and refilling of storage reservoirs at the Golf Courses, and for related exterior uses.

E. The Parties desire to enter into a new agreement in order to modify certain terms and conditions, which shall supersede and replace the existing agreement, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

AGREEMENTS:

1. Purchase and Sale of Effluent. BCSC agrees to sell and deliver and User agrees to purchase and accept delivery of all Effluent generated by the Boulders East Plant subject to the terms and conditions set forth hereinafter.

2. Service and Delivery of Effluent. BCSC shall deliver and User shall accept Effluent as follows:

(a) Quantity of Effluent. BCSC shall deliver to the Resort all Effluent generated by the operation of the Boulders East Plant (or a new wastewater treatment facility which may be constructed by BCSC as contemplated herein). In the event the treatment capacity of the Boulders East Plant is increased to a capacity greater than 150,000 gpd, or a new wastewater treatment facility is constructed by BCSC to replace the Boulders East Plant which produces Effluent in a quantity that is greater than 150,000 gpd, BCSC shall enter into good faith negotiations with User for the purchase by User of amounts of Effluent in excess of 150,000 gpd. The foregoing notwithstanding, nothing herein shall require BCSC to deliver Effluent to User in amounts in excess of 150,000 gpd.

(b) Quality of Effluent. The Effluent delivered by BCSC shall meet all applicable Federal, State of Arizona, and local health and safety standards for non-potable water supplied for turf irrigation and other exterior uses contemplated in this Agreement. BCSC makes no

representations or warranties with respect to any characteristic of the Effluent which is not specifically addressed by the applicable standards or the current re-use permit held by the User with respect to the Effluent. BCSC makes no representation or warranty that the Effluent is suitable for any purpose intended by User and use of the Effluent for any purpose is at the sole risk of the User.

(c) Metered Deliveries; Delivery Point. All deliveries of Effluent to User shall be metered. The meter is presently located immediately adjacent to the Boulders East Plant, which shall constitute the point of delivery. BCSC shall be responsible for the maintenance, repair and replacement of all facilities on BCSC's side of the meter as well as the meter, and User shall be responsible for the maintenance, repair and replacement of all facilities on User's side of the meter. The location of the meter may be changed by the mutual agreement of the parties. The User shall pay all costs associated with the maintenance, testing and certification of the meter.

(d) Service Interruptions by BCSC. BCSC shall use its reasonable efforts to provide a continuous level of service to User. In the event service is to be temporarily discontinued, BCSC shall promptly notify User of the particular circumstances and the estimated length of time during which service will be discontinued. BCSC shall make reasonable efforts to resume normal service as quickly as possible.

(e) Service Interruptions by User. In the event User is unable to accept deliveries of Effluent, User shall pay BCSC as if such Effluent had been delivered in accordance herewith and shall further pay BCSC the reasonable costs incurred by BCSC to dispose of such Effluent. In the event of a temporary interruption of the ability of User to accept Effluent, BCSC shall cooperate with User to minimize the amount of Effluent which cannot be accepted by BCSC. User shall make reasonable efforts to resume acceptance of deliveries of effluent as quickly as possible.

3. Charges for Effluent. The charge for all Effluent delivered to User hereunder shall

be determined from time to time by the Commission in connection with a general rate proceeding or similar proceeding in which all of BCSC's rates and charges for sewer utility service are determined in accordance with applicable laws and regulations. BCSC shall promptly notify User of all requests for modification of the charge for Effluent, and shall provide User, at User's cost, with a complete copy of all requests for rate increases or other rate adjustments, including the application, pre-filed testimony and supporting schedules and other exhibits. If the Commission at any time de-tariffs effluent service or ceases to consider such service a regulated service subject to the Commission's jurisdiction, the charge for Effluent delivered to User shall remain the tarified charge for at least one year, after which time BCSC may modify the charge for Effluent without Commission approval provided that BCSC and User shall negotiate such modification in good faith. All such charges shall be subject to the provisions of Paragraph 12(a), below.

4. Payment for Effluent Service. User shall be billed for and shall pay for Effluent on a quarterly basis based on the metered quantity of Effluent delivered to User during the preceding calendar quarter plus the amount of any Effluent which BCSC made available but User was unable to accept during such calendar quarter. All amounts payable by User to BCSC hereunder shall be due and payable within twenty-five (25) days of receipt of invoice, and any payment not received within such time shall be considered delinquent and be subject to any late payment penalty authorized by the Commission.

5. Changes to Effluent Standards. In the event that material changes are made to the re-use permit held by the User, or to an Aquifer Protection Permit, or to the quality standards applicable to Effluent used for turf irrigation and related purposes, BCSC shall notify User of those modifications to the facility from which the Effluent is provided or to any retainage features which are required to ensure that such new standards are met. At the option of the User, User shall (a) pay the reasonable costs of such modifications which are required to be made to the facility or retainage

feature for the purpose of complying with the new permit requirements or effluent re-use standards, or (b) terminate this agreement in accordance with Paragraph 12.

6. BCSC's Covenants. BCSC covenants and agrees that BCSC will:

- (a) Operate the Boulders East Plant and the related pipelines, pumps and facilities so as to allow the production and delivery of Effluent to User;
- (b) Maintain in good standing and renew when appropriate all permits and other regulatory approvals necessary for purposes of subparagraph (a);
- (c) Make such repairs, upgrades and improvements to the Boulders East Plant as may be necessary in connection with subparagraph (a); and
- (d) Not restrict, reduce or otherwise limit the quantity of Effluent produced by the Boulders East Plant or take any action that would reduce the plant's treatment capacity except as otherwise provided for in this Agreement.

The obligations of BCSC under this Paragraph shall terminate if physical conditions at the Boulders East Plant or any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the Boulders East Plant or render the operation of such plant uneconomic. If economic considerations, technical requirements or regulatory changes require BCSC to close or relocate the Boulders East Plant, BCSC will attempt, in good faith and to the extent technically feasible, to relocate the Boulders East Plant or construct a new wastewater treatment plant at a site that is as close as reasonably possible (taking into account the economics of such relocation or construction) to the Golf Courses. In the event the Boulders East Plant is relocated or a new facility constructed, User will be responsible for the costs of constructing additional pipelines and other facilities necessary to transport the Effluent from such new location to the Resort's delivery point, which upon request of BCSC shall be considered a contribution in aid of construction. BCSC shall be solely responsible for all costs and expenses resulting from the treatment of such pipelines and

facilities as contributions in aid of construction, including (without limitation) (i) costs relating to any easements for pipelines and facilities; (ii) costs relating to meter relocation; (iii) costs relating to maintenance and repair of the pipelines and facilities; and (iv) any income taxes. In the event the relocated or new facility has a larger capacity than the Boulders East Plant, User shall have the right to purchase a maximum amount of 150,000 gpd of effluent. For the purposes of this provision, the term "uneconomic" means that the costs and expenses relating to the treatment and delivery of Effluent, including applicable overheads, would exceed the market price for effluent used for golf course irrigation and similar purposes in Maricopa County.

7. User's Covenants. User covenants and agrees that User will:

- (a) Operate, repair and maintain its storage lakes, pipelines, and other facilities used in connection with the transportation and storage of Effluent provided hereunder in accordance with all applicable laws and regulations; and
- (b) Maintain in good standing and renew when appropriate all permits, including but not limited to Aquifer Protection Permits, and other approvals necessary for User to receive delivery of, store and utilize Effluent for turf irrigation, exterior landscape watering and similar uses.

8. Limitations on Effluent Use. User covenants and agrees that all Effluent delivered to User pursuant to this Agreement shall be used by User in connection with the Resort. User shall not make any changes in the nature of the use of the Effluent nor make any application for changes or amendments to the permit governing the use of the Effluent by the User, which changes or amendments may affect BCSC's operations, without the express written consent of BCSC. User shall not transport Effluent to any location outside of BCSC's certificated service territory, nor shall User sell or agree to sell Effluent to any other person or entity.

9. Indemnity.

(a) Indemnification of User. Subject to the limitations set out herein, BCSC shall indemnify, protect, defend (with legal counsel acceptable to User) and hold User harmless from, and upon demand shall pay or reimburse User for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by BCSC or caused by any act, neglect, fault or omission of BCSC or its agents, contractors, employees or servants. User shall not seek indemnification from BCSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of the use of Effluent by the User or resulting from any characteristic of the Effluent which is not specifically addressed in the standards which are applicable to the Effluent.

(b) Indemnification of BCSC. User shall indemnify, protect, defend (with legal counsel acceptable to BCSC) and hold BCSC harmless from, and upon demand shall pay or reimburse BCSC for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by User or caused by any act, neglect, fault or omission of User or its agents, contractors, employees or servants.

10. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, when such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy,

interference by civil authorities, passage of laws, orders of the court, delays in receipt of materials, or any other cause, where such cause is not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

11. Term. This Agreement shall remain in effect for a period of twenty (20) years from the date on page one of this Agreement, unless earlier terminated as provided under Paragraph 12, below. After the expiration of the initial twenty (20) year term, this Agreement shall be automatically renewed for successive five (5) year terms unless a Party provides written notice to the other Party of its election to terminate the Agreement, which notice shall be provided no less than one (1) year prior to the renewal of the Agreement.

12. Termination of Agreement.

(a) Rate Increases. In the event that the charge for Effluent delivered to User under this Agreement increases by more than twenty-five percent (25%) above the charge in effect at the time of any increase in the charge for Effluent or, in the alternative, increases by more than fifty percent (50%) within any five-year period, User, in its sole discretion, may terminate this Agreement by providing notice of its intent to terminate to BCSC on or before sixty (60) days from the date on which the increased charge becomes effective. If such notice is given, this Agreement, and all rights and obligations hereunder, shall terminate without further action one hundred twenty (120) days from the date such notice is delivered to BCSC. In the event that User elects not to exercise its right to terminate this Agreement following any increase in the charges for Effluent, User shall not waive its right to terminate based on future increases in charges.

(b) Termination for Breach. Either Party may terminate this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such

event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 14, below.

(c) Termination for Effluent Quality Changes. If User elects not to pay for those modifications to the East Boulders Plant necessary to ensure the Effluent continues to meet changes to the quality standards applicable to the Effluent, this Agreement may be terminated by BCSC upon 120 days written notice to User by BCSC.

13. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BCSC to: Trevor Hill
Suite 201, 1962 Canso Road,
Sidney, British Columbia,
Canada V8L 5V5

with a copy to: Algonquin Power Income Fund
c/o Peter Kampian
Algonquin Power Corporation, Inc.
#210, 2085 Hurontario Street
Mississauga, Ontario L5A 4G1

If to User to: Boulders Joint Venture
c/o Wyndham International, Inc.
1950 Stemmons Freeway, Suite 6001
Dallas, Texas 75207
Attention: Legal Department

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

14. Dispute Resolution.

(a) Good Faith Negotiations. For the purpose of dispute resolution, each Party

shall designate an officer or employee to act as its representative (hereinafter, "a Designated Representative"). A Party that believes a dispute exists under this Agreement will first refer the dispute to the Designated Representatives of the Parties for resolution. The Designated Representatives will personally meet and attempt in good faith to resolve the dispute. If the Designated Representatives cannot resolve the dispute within thirty (30) days, a Party that still believes a dispute requires resolution shall avail itself of the provisions of subparagraph (b), below.

(b) Arbitration. If a Party still believes a dispute requires resolution after following the procedures of subparagraph (a), that Party shall provide a detailed written notice of dispute to the other Party setting forth the nature of the dispute and requesting that the dispute be determined by means of arbitration. Immediately following such notice, the dispute shall be submitted for and settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court with jurisdiction.

(c) Other Remedies. The preceding subparagraphs are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all disputes that would traditionally be resolvable by a law court would be resolved under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the Parties will stay any further judicial proceeding pending arbitration of all underlying claims between the Parties. The Parties also recognize that the Commission may have primary jurisdiction over certain issues that may arise between and among the Parties that relate to the provision of public utility service. Accordingly, this paragraph is not intended to prohibit a Party from bringing any such issues to the Commission

for resolution or from taking any position at the Commission that would not be inconsistent with or barred by this Agreement or by collateral estoppel, res judicata or other issue or fact preclusion doctrines.

15. Attorneys' Fees. In the event either Party hereto employs legal counsel or brings a judicial action or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs from the other Party, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a judicial action for the purposes of this paragraph.

16. Resort Accommodations. From time to time, and subject to availability, User shall make accommodations at the Resort available to visiting representatives of BCSC at the best available corporate rate then offered by the Resort. BCSC's rights under this Paragraph shall be strictly limited to the use of accommodations for business purposes.

17. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

18. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement.

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall

be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

20. Governing Law; Severability. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. If a court or governmental agency with jurisdiction determines that any provision of this Agreement is unenforceable, illegal or contrary to any applicable law, regulation, regulatory order, or tariff, then such provision shall be severed from this Agreement. In such case, the remainder of this Agreement shall remain in effect if both Parties can legally, practicably, and commercially continue without the severed provision.

21. Construction. The terms and provisions of this Agreement represent the results of negotiations between BCSC and User, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BCSC and User each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement.

22. Integration. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BCSC and User with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BCSC and User with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the

and provisions of this Agreement and the terms and provisions of any document, instrument, or other agreement executed in connection with or furtherance of this Agreement, the term, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

2. Headings and Captions. The headings and captions of this Agreement are for information only and are not intended to limit or define the meaning of any provision of this Agreement.

3. Counterparts. This Agreement may be executed in any number of counterparts, each when executed and delivered, shall be deemed an original, but all of which when taken together shall constitute one binding contract and instrument.

IN WITNESS WHEREOF, BOULDERS CAREFREE SEWER COMPANY and BOULDERS JOINT VENTURE, have caused this Agreement to be executed on their behalf by their authorized representatives as of the day and year first above written.

BOULDERS CAREFREE SEWER
CORPORATION, an Arizona corporation

By: 

Its: TREVOR T. HILL
PRESIDENT

BOULDERS JOINT VENTURE,
an Arizona general partnership

By: PAH GP, INC.
A Delaware corporation
Its: general partner

By: 

Fred J. Kleisner, President

John R. Bahlmann, Vice President

B

SCANNED
AUG 27 1997

Agreement No. 920004

BY P.V. PIPELINE CAPACITY AGREEMENT

THIS PIPELINE CAPACITY AGREEMENT ("Agreement") is entered into as of the 3rd day of February, 1992, by and between the CITY OF SCOTTSDALE, an Arizona municipal corporation ("City"), and BOULDERS JOINT VENTURE, a joint venture formed under the Arizona Uniform Partnership Act ("Owner").

RECITALS:

A. On February 12, 1991, the City and Desert Mountain Properties ("DMP") and Carefree Ranch Water Company entered into the Agreement No. 900083 (the "RWDS Agreement") which set forth, among other things, the respective obligations of the City and DMP with respect to the construction of a reclaimed Non-Potable Water distribution system known as the RWDS. When constructed and operational, the RWDS will enable the City to supply Non-Potable Water for irrigation purposes to the equivalent of approximately twenty 18-hole golf courses located north of the Central Arizona Project ("CAP") canal.

B. The RWDS Agreement provides, among other things, that certain owners of property may purchase from the City the right to receive a share of the 20 million gallon per day transmission capacity of the RWDS.

C. The City desires to have golf courses watered to the maximum extent possible with Non-Potable Water and therefore desires that the Owner purchase capacity in the RWDS to transport Non-Potable Water through the RWDS for use on the Property.

D. The City Council has found and determined that this Agreement: (i) is consistent with the City's General Plan, as amended; (ii) is in the best interests of the health, safety and general welfare of the City, its residents and the general public; and (iii) is entered into pursuant to and constitutes a present exercise of the police power by the City. The assurances provided herein by the City and the Owner to each other have been provided pursuant to and as contemplated by Arizona statutes, bargained and in consideration for the undertaking of obligations of the parties as set forth herein and are intended to be and have been relied upon by the parties to their detriment.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows:

AGREEMENT:

1. DEFINITIONS.

1.1 "Additional Pumps" means pumps that were identified in the plans, specifications and working drawings for the RWDS prepared by NBS/Lowry and approved

by the City on September 5, 1991, and September 10, 1991, that were not installed at initial construction of the RWDS including all costs related to their installation.

1.2 "Force Majeure" means acts of God, fire, flood, shortage of labor, material or power, strikes, war, insurrection, mob violence, contested easement, right-of-way or fee acquisition, or other causes beyond the control of the City which delay construction of the RWDS.

1.3 "Main Line" means a pipeline extending from the RWDS Trunk Line to a meter on the Property and any and all valves, booster stations and other facilities associated directly with the Main Line.

1.4 "Non-Potable Water" means 1) Surplus CAP Water withdrawn from the CAP canal, treated effluent from the Wastewater Treatment Plant and a combination of these, subject to the terms of this Agreement, and 2) any other non-potable water available to the City which the City chooses to make available to Owner through the RWDS subject to the terms of Section 4.2.

1.5 "Property" means that parcel of land to be served by the RWDS pursuant to this Agreement and that is described in the legal description attached hereto as Exhibit "A".

1.6 "RWDS" means the reclaimed water distribution system that will be constructed by the City in accordance with the plans, specifications and working drawings prepared by NBS/Lowry and approved by the City on September 5, 1991, and October 10, 1991, and all Main Lines dedicated to the City.

1.7 "RWDS Trunk Line" means the primary transmission line of the RWDS, planned to be located along Pima Road from the vicinity of the CAP canal to Cave Creek Road.

1.8 "Surplus CAP Water" means (i) CAP water made available by the Central Arizona Water Conservation District ("CAWCD") to the City in excess of the City's entitlement under its subcontract for municipal and industrial water dated October 15, 1984, as amended from time to time (including amendments to add amounts of CAP water that may be assigned to the City) (the "Subcontract") and (ii) CAP water made available to the City by CAWCD under a contract or contracts for interim water, only to the extent of the volume of such interim water in excess of the volume of the City's entitlement under the Subcontract; and (iii) such other CAP water made available to the City by CAWCD which the City determines is available for delivery through the RWDS.

1.9 "Wastewater Treatment Plant" means a wastewater treatment plant to be constructed by the City at a location north of the CAP canal, which will be a source of effluent for the RWDS, as more particularly described in the City of Scottsdale Five Year Capital Improvement Plan, dated June 3, 1991, as amended from time to time, and as approved by the City's electorate on November 7, 1989.

2. CONSTRUCTION, OPERATION AND MAINTENANCE.

2.1 Construction of RWDS. The City intends to and shall use its best efforts to cause the RWDS to be constructed in substantial accordance with plans, specifications and working drawings prepared by NBS/Lowry and approved by the City on September 5, 1991, and October 10, 1991. If the City fails to Commence construction of the RWDS for any reason by September 1, 1992, subject to delays caused by DMP or by Force Majeure, then this Agreement shall terminate. Once commenced, the City shall diligently pursue construction of the RWDS to completion. In case of termination pursuant to this section, Owner shall be entitled to a refund of all payments made by Owner to the City under this Agreement. The City shall invest all funds received under this Agreement in the manner permitted for municipal funds by law. Upon refund of Owner's payments pursuant to this section, Owner shall be entitled to interest at the rate that the City earned on the funds as applied to the entire refund amount. The Owner acknowledges that the City will use the payments made by Owner pursuant to Section 3 of this Agreement to pay the costs of constructing the RWDS as incurred. Owner hereby disclaims any and all interest in the plans, specifications and working drawings prepared by NBS/Lowry and Owner agrees not to take any action to inhibit the City's right to use the plans, specifications and working drawings prepared by NBS/Lowry.

2.2 Commencement and Completion of Construction. Construction of the RWDS shall be deemed to "Commence" on the date the City has fully executed an agreement with an entity to serve as a contractor for the construction of any part of the RWDS Trunk Line. Construction of the RWDS shall be deemed "Complete" on the date the RWDS (excluding the Main Lines) has been fully tested and is operational for the purposes for which it is intended.

2.3 Operation and Maintenance of RWDS. The City shall operate and maintain the RWDS, the Main Line, and the 8 million gallon reservoir according to normal and customary City practices and in accordance with all applicable law, including but not limited to, reconstruction, alteration, repair and replacement of any and all components and any additional construction related to matters contained in this sentence. The cost of these activities and other costs, all of which are described in Exhibits B-1 and B-2, except the cost of acquiring and installing the Additional Pumps, shall be paid by the City from those rates to be charged to all customers of the RWDS. Owner agrees that all operational decisions concerning the RWDS shall be entirely at the City's discretion, subject to the City's obligations under this Agreement.

2.4 RWDS Operating Account. The City shall establish a separate fund to account for revenues and expenditures of the RWDS ("the RWDS Operating Account"). All payments made pursuant to Section 5 and Exhibits B-1 and B-2 of this Agreement shall be deposited in the RWDS Operating Account. Following completion of the RWDS any monies collected from persons who have purchased capacity in the RWDS, over and above any payments due to the City, DMP and other owners of RWDS Capacity who have

assigned capacity to the City pursuant to Section 16 of this Agreement, shall be deposited by the City in the RWDS Operating Account to be used for any purpose related to this Agreement as provided in Section 2.3 and Exhibits B-1 and B-2 hereof.

2.5 Construction, Operation and Maintenance of Wastewater Treatment Plant. The City and Owner are entering into this Agreement with the understanding that the Wastewater Treatment Plant is to be an important supplier of Non-Potable Water to the RWDS. Accordingly, pursuant to the provisions of the City of Scottsdale Five Year Capital Improvement Plan, dated June 3, 1991, as amended from time to time, and as approved by the City's electorate on November 7, 1989, the City intends to and shall use its best efforts to construct, operate, repair and maintain the Wastewater Treatment Plant with an initial capacity of approximately 4.5 mgd.

2.6 Limitation of Rights. Owner shall have, by virtue of this Agreement, no rights, privileges or obligations whatsoever with regard to the design, construction or testing of the RWDS, except as specifically provided in this Agreement.

3. PAYMENTS BY OWNER FOR RIGHTS UNDER THIS AGREEMENT.

Concurrently with its execution of this Agreement, Owner shall pay to the City, in cash (by wire transfer) or cashier's check, Three hundred forty-seven thousand two hundred fifty-one dollars (\$347,251), as adjusted as shown on Exhibit "C" attached hereto, for 500,000 gallons per day of transportation capacity in the RWDS ("Owner's RWDS Capacity"). This dollar amount has been calculated pursuant to Exhibit "C" attached hereto.

4. WATER SUPPLY.

4.1 Delivery Obligations of City. Promptly following completion of Construction of the RWDS, and the Main Line from the RWDS to the Property, the City will deliver Non-Potable Water to the Property for only those purposes permitted in this Agreement in amounts as may be requested by Owner from time to time as set forth hereinafter, so long as the City determines that Non-Potable Water in the requested amount is available for delivery pursuant to this Agreement, but, except as provided in section 4.5 below, in no event in an amount greater than Owner's RWDS Capacity.

4.2 NON-POTABLE SUPPLY. If effluent is available from the Wastewater Treatment Plant for non-potable water purposes, as such availability is determined by the City in its sole discretion, Owners who have purchased capacity in the RWDS, including the City and DMP with regard to any capacity they have purchased or reserved in the RWDS, shall have priority for delivery of the effluent over persons or entities who have not purchased or reserved RWDS capacity. The City will use its best efforts to make effluent from the Wastewater Treatment Plant available to the RWDS. When available, the City

may also deliver Surplus CAP Water in the RWDS. When there is insufficient Non-Potable Water to fully satisfy the demands of all owners of RWDS capacity, the City will allocate the available supply proportionately among all Owners based on the relationship of each Owner's RWDS Capacity to the total available supply. If the City sells a total of more than 20 million gallons per day (mgd) capacity in the RWDS, including the capacity reserved for the City's two golf courses, and there is insufficient Non-Potable Water available to fully satisfy the demand of all owners of RWDS capacity, then the City shall allocate Non-Potable Water first to the owners of the first 20 mgd capacity, until either their total demand is met or the available Non-Potable Water is fully allocated. If after satisfying the demands of the owners of the first 20 mgd capacity, there is Non-Potable Water still available, it will then be allocated among the owners of the 21st and above mgd of capacity. The City shall decide, in its sole discretion, whether to sell more than 20 mgd in the RWDS. The City shall not deliver to the Property through the RWDS water that is not from the CAP canal or generated by the Wastewater Treatment Plant unless the Owner has agreed to receive such water and the City has first (i) tested the water to determine its composition to insure that it will not materially and adversely affect the Property, and (ii) provided Owner with fifteen days' written notice of its intent to use such water, which notice shall include the results of the water tests.

4.3 BACKUP POTABLE SUPPLY. As a condition of the City delivering water through the RWDS to the Property, Owner shall (i) pay, or have previously paid, to the City a water resources development fee for an amount of water at least equal to the Arizona Department of Water Resources (ADWR) maximum annual potable water allotment for the intended turf use or, if such allotment does not exist, the expected annual demand for water to serve the uses permitted under Section 10 hereof, considering all applicable conservation requirements (the "annual allotment") (or if the City has no such fee, a payment of \$2,000 per acre foot of annual allotment increased annually by the Engineering News Record Construction Cost Index for Los Angeles or comparable index if this no longer exists) or, alternatively, (ii) transfer to the City the right to receive CAP water, in an amount equal to the annual allotment or (iii) a combination of (i) and (ii) equal to the annual allotment. In addition, Owner shall pay any water development fees, meter fees and any other fees required by City ordinances and codes at the time the fee payments are made, together with the installation of a connection to the City's potable system. Payment of the fees and/or transfer of CAP water may occur at any time prior to receiving any Non-Potable Water from the RWDS. The City will not deliver Non-Potable Water to the Property until the requirements of this section have been met. The combined total of potable and Non-Potable Water delivered by the City to the Property for the purposes permitted under this Agreement in any calendar year shall not exceed the amount of water for which the requirements of this section have been met, adjusted upward based on ADWR allowances for use of effluent. If Owner is entitled to use potable City water because the turf-related use was in existence and received potable water prior to the effective date of the City's water resource development fee ordinance, then the fee payment and CAP water transfer requirements in this section shall not apply and the turf-related use shall be considered to be "grandfathered." To the extent the requirements of this section are met either by

payment, transfer of CAP water or grandfathering, the City shall have the same duty to deliver potable water to Owner as it has to deliver potable water to other users for comparable purposes. In particular, the City shall deliver potable water to the Property for the purposes permitted hereunder in an amount equal to the difference between the Owner's demand for Non-Potable Water (to the extent the requirements of this section have been met) and the amount of Non-Potable Water delivered by the City pursuant to Section 4.1. The City may reduce the amount of potable water to be delivered under this section only if the City in the reasonable exercise of its discretion determines that public health, safety and welfare require it to reduce deliveries of potable water on a uniform basis to all non-essential industrial users of water throughout the City.

4.4 Quality. The City hereby covenants that it will use its best efforts to assure that all Non-Potable Water supplied to the Property through the RWDS will meet or exceed the minimum quality standards set forth in all Arizona Department of Health Services, Arizona Department of Environmental Quality and United States Environmental Protection Agency standards and other applicable standards for effluent reuse for landscape irrigation of golf courses, common areas, parks, playgrounds and similar uses. The City's compliance shall be such that neither the Property nor the reservoirs on the Property that hold the Non-Potable Water need to be fenced. All costs incurred in meeting the City's obligations under this section, including but not limited to additional construction, reconstruction, alteration, repair and replacement of components, operation, maintenance, overhead and loan amortization, shall be borne by the parties receiving water from the RWDS and paid through the rates calculated as set forth in Exhibits B-1 and B-2. These costs do not include costs of acquiring and installing the Additional Pumps.

4.5 Delivery. The City will deliver Non-Potable Water to the Property through the RWDS on a continuous and constant gallons per minute basis over a twenty-four hour period in accordance with a request by Owner. Owner will give at least twenty-four (24) hours advance notice to the City of Owner's daily demands for the Non-Potable Water through the RWDS. Owner shall not be entitled to adjust its delivery requests more than one time each day. Owner is entitled to request less Non-Potable Water than Owner's RWDS Capacity and City shall not deliver more Non-Potable Water than Owner requests without Owner's consent. Owner acknowledges that, because deliveries by the City will be on a constant twenty-four hour basis, it is necessary to provide a surge pond to regulate the flow of water between the time it is delivered by the City and the time the water is used for watering. Owner agrees to provide and maintain such a surge pond. If for operational reasons the City in its sole discretion determines it is prudent, the City reserves the exclusive right to provide deliveries in a time frame shorter than 24 hours, provided that the City's water delivery does not exceed the holding capacity of the surge pond. The maximum quantity of Non-Potable Water that the City will deliver to Owner in any 24 hour period is Owner's RWDS Capacity as set forth in Section 3 hereof; provided, however, that the City may in its sole discretion, when possible considering the amount of Non-Potable Water available for the RWDS and demand by other RWDS capacity owners, attempt to meet

Owner's requests for the delivery of Non-Potable Water to the Property in excess of its RWDS Capacity.

5. WATER RATES.

The City shall charge Owner for the Non-Potable Water delivered to its Property through the RWDS at the same rates charged to other customers of City using water from the RWDS for turf-related purposes and lifted by the same pump stations, as calculated pursuant to Exhibits B-1 and B-2. Any potable water delivered to the Property from the potable water system pursuant to this Agreement shall be billed at the then-prevailing rates imposed by the City for the applicable category of potable water use. The rates for Non-Potable Water and potable water delivered to the Property shall be adjusted by any conservation charges or discounts established from time to time by the City for the use of such water.

6. SHUT-DOWNS

6.1 The City shall have the right to shut down the RWDS and Main Line for purposes of routine maintenance and repair, and in the event of an emergency. The City shall give Owner notice of routine maintenance and repair shut-downs as soon as such shut-downs are scheduled by the City, but in no event less than one week before such shut down. In the event of an emergency, the City shall give Owner as much notice as is reasonable under the circumstances and the City may shut down the RWDS immediately. Owner agrees to provide facilities on the Property sufficient to store Non-Potable Water in an amount equal to or greater than that which would be delivered in two days at Owner's RWDS Capacity. City will use its best efforts to perform routine maintenance and repair in the winter months.

6.2. Owner agrees to comply with all requirements of Maricopa County, the State of Arizona, and/or the Federal Government in the use of effluent on its property and, subject to the provisions of this Section, the City may stop delivery of water through the RWDS to Owner for so long as Owner is not in compliance with Maricopa County, State of Arizona, or Federal laws, regulations or other requirements for the use of effluent. The City will notify Owner from time to time of said requirements regarding the use of effluent, provided that ultimate responsibility for compliance with laws, regulations or other requirements regarding the use of effluent rests with Owner. The City will notify Owner of any notices of purported violations by Owner received by the City from enforcement agencies. The City will allow Owner no less than thirty (30) days following Owner's receipt of a notice of Owner's violation (or such shorter period if required by the notice of violation) to cure the violation before the City stops delivery through the RWDS. Owner may use the backup water supply from the potable water system of City as provided in Section 4.3 of this Agreement as long as such use complies with all applicable legal

requirements. Notwithstanding the foregoing, if the City reasonably determines that there is an imminent threat to public health, safety and welfare, the City may allow a shorter curing period or may stop deliveries of Non-Potable Water immediately.

7. CONSERVATION REQUIREMENTS.

Owner agrees to comply with all applicable water conservation requirements adopted by City and/or imposed by ADWR which apply to Owner's use of the water on the Property. These requirements shall be deemed to include but not be limited to applicable restrictions or limitations imposed by ADWR on the amount of water which may be used for turf-related watering purposes on the Property when groundwater constitutes a portion of the water used for such purposes (whether or not groundwater is actually used for turf-related watering purposes), and any variances, modifications or adjustments to the conservation requirements applicable to Property as a result of administrative review or application for variance, modification or adjustment before ADWR, or as a result of adjustments allowed by ADWR due to the actual source of the water supply used on the Property. The combined total of potable and Non-Potable Water delivered by the City to the Property for purposes permitted under this Agreement in any calendar year shall not exceed the amount that may be used pursuant to the applicable conservation requirements, as described in this section. Owner reserves the right to protest any DWR conservation requirements imposed on Owner.

8. PRIVATE WATER COMPANIES.

In the event Owner owns a private water company which is entitled to serve the Property, Owner agrees that such private water company shall not serve water to the golf courses located on the Property during the term of this Agreement except to the extent that the City is unable to deliver to the Property Non-Potable Water through the RWDS or potable water through its municipal water system in an amount equal to Owner's RWDS Capacity.

9. USE OF GROUNDWATER.

From and after the date that Non-Potable Water can be delivered to the Property through the RWDS, Owner shall not use on the Property any groundwater for landscape watering purposes which has been withdrawn pursuant to a Type 1 or Type 2 non-irrigation grandfathered right or a groundwater withdrawal permit, or which has been delivered by a municipal provider other than the City, except that the Owner may use such groundwater for turf-related watering purposes during any temporary period in which the City is unable to deliver Non-Potable Water or potable water to the Property because of distribution

system failure or other emergency, if the Owner has received written approval to do so from the City and the Director of the ADWR.

10. Permitted Uses.

Water from the RWDS may be used under this Agreement only for the following purposes, so long as these remain legal uses for non-potable water: golf course irrigation and related landscaping, revegetation, ponds and water features related thereto.

11. LOCATION OF USE

Non-Potable Water may be used only on the Property. From time to time, the City may approve in writing, subject to the terms of this Agreement, Owner's written requests to change the legal description of the Property, and the Agreement shall be amended accordingly. If a request related to a transfer of Capacity under Section 16, the City will amend the Agreement to change the legal description so long as all other actions required to make the transfer effective have occurred. If the legal description shown on Exhibit A attached hereto does not accurately describe the location where the Non-Potable Water will actually be used, prior to the delivery of Non-Potable Water to the Property Owner and City shall amend Exhibit A to more accurately or more particularly describe or show with a map the location of the use of Non-Potable Water.

12. CONSTRUCTION OF MAIN LINE.

Owner shall not be entitled to receive Non-Potable Water through the RWDS until it constructs a Main Line, including a meter of sufficient size to deliver Non-Potable Water to the water distribution system of Owner at the Property in an amount at least equal to Owner's RWDS Capacity at the time of commencement of construction of the Main Line. With regard to the inclusion of a meter in the construction of a Main Line, Owner shall only be obligated to pay the costs and expenses incident to the purchase and installation of the meter; Owner shall have no obligation to pay to the City any fees, including development fees, in connection with such meter. Prior to construction, plans and specifications for the Main Line shall be submitted to the City for approval, which approval shall not be unreasonably withheld. After construction, Owner shall convey to the City the Main Line and any easements, rights of way and/or fee property equal to ten feet on either side of the center line along the alignment of the Main Line contained in the approved plans and specifications or have paid the cost of condemning such easements, rights of way and/or fee property pursuant to Section 13.0 hereof. City will accept the Main Line and related property interests pursuant to the City's usual and customary acceptance procedure. The Main Line and related property interests shall then be a part of the RWDS. Owner is not required to pay costs in connection with oversizing the Main Line.

13. CONDEMNATION.

To the extent necessary to facilitate the construction of the Main Line, the City will use its eminent domain and immediate possession rights and powers to acquire easements, rights-of-way and fee property for construction, maintenance, operation, repair and replacement of the Main Line. All costs related to such acquisition shall be paid for by Owner. Owner shall deposit in cash with City, prior to City taking any action, the total estimated costs and Owner shall then pay to City or receive from City the difference between the actual total costs and the amount deposited. Costs shall include but not be limited to the condemnation award or purchase price of the acquired property, court costs, outside attorney fees, expert witness fees, appraisals, surveys, and environmental assessments.

14. OWNER LETTER AGREEMENT AND ZONING STIPULATIONS.

14.1 Owner's Guaranteed Backup Potable Water Supply. Pursuant to the letter of June 12, 1991, to Harold A. Jenkins, Project Manager, Boulders, from Leonard Dueker, General Manager, Scottsdale Water Resources Department, attached hereto as Exhibit and incorporated herein ("Letter Agreement"), Owner has paid to the City a one-time water resources development fee in the amount of \$60,000 (thirty (30) acre feet at \$2,000 per acre foot) for delivery of up to 30 acre feet of water annually through the City's potable water system for use on the Property, unless additional allocation is purchased. Owner has consequently connected the irrigation system for the Property to the City's potable water system and paid all required fees. Owner has thus, as of the date of this Agreement, satisfied the requirements set forth in Section 4.3 for thirty (30) acre feet of annual demand, notwithstanding the fact that the potable supply purchased by Owner is only a portion of the ADWR maximum water allotment for the Property. The remaining annual demand for the Property is being met, as acknowledged in the Letter Agreement, with other supplies currently available to Owner, including but not limited to reuse of wastewater generated and treated on The Boulders development, however, in no event may Owner violate Sections 8 and 9 of this Agreement. It is expressly understood and agreed that the remaining golf holes within The Boulders are not part of the Property defined in this Agreement and not subject to the terms and conditions of this Agreement, except that the regulations of the Arizona Department of Environmental Quality (ADEQ) apply to irrigation water used on any of the 36 holes within the Boulders Master Plan, not just the Property as defined in this Agreement. Given the unique jurisdictional circumstances of the Boulders Master Plan, the parties understand that the water from the RWDS or from the City's backup potable water system is delivered into consolidated storage facilities for golf course watering purposes at The Boulders, therefore, the parties agree that water delivered from the RWDS or from the City's backup potable water system shall be deemed to be used on the Property for purposes of this Agreement. To the extent that Section 4.3 of this Agreement conflicts with this Section 14.1, the provisions of Section 14.1 shall control. The Letter Agreement and the

right to water supplied through the City's potable water system as provided in the Letter Agreement shall survive any termination of this Agreement.

14.2 Owner's Right to Purchase Additional Backup Potable Supply. Under this Pipeline Capacity Agreement, Owner has purchased transportation capacity in the RWDS in the amount of 500,000 gallons of daily demand, which is enough to deliver annually more than the quantity of water for which the requirements of Section 4.3 have been met as of the date of this Agreement. As outlined in Section 14.1 the requirements of Section 4.3 have been met for thirty (30) acre feet. In addition, Owner may at any time acquire additional potable backup water supply from the City pursuant to the terms set forth in Section 4.3 above, which will correspondingly entitle Owner to receive that additional amount of water through the RWDS up to the total quantity of water (in annual acre feet) for which water resources development fees have been paid. Owner also has the right to purchase additional RWDS capacity, providing it is available.

14.3 Satisfaction of Zoning Stipulations. Execution and implementation of this Agreement by Owner and the City shall be deemed to constitute satisfaction of Zoning Stipulation 15b. and Use Permit Stipulations 6 and 7 of Cases 42-Z-89/38-UP-89. The City Water Resources Department shall confirm that Owner has satisfied the above-referenced stipulations by placing the memo attached hereto as Exhibit D in the above-referenced zoning file.

15. DEFAULT.

15.1 Remedies; Cure Periods. In addition to the rights and remedies otherwise provided in this Agreement, any failure by either party to act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period") after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation. The notice of default referenced above shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. If such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies which may be available under law or equity, including without limitation the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages.

15.2 Remedies for Non-Payment of Water Charges. Monthly charges for Non-Potable Water as calculated pursuant to Exhibits B-1 and B-2 shall be subject to the same due dates, notice requirements, penalties, liens, shutoff and other enforcement provisions provided for all users of potable water from the City pursuant to the Scottsdale Revised

Code, as amended from time to time. Notwithstanding such requirements, delinquent charges shall accrue interest after 45 days from the date of billing at the annual rate of 12%.

16. ASSIGNMENT OF RWDS CAPACITY. Owner may assign Owner's RWDS Capacity only as provided in this section.

16.1 Assignment of Entire Capacity. Owner may assign all of Owner's RWDS Capacity to a purchaser of the Property. Such assignment will be automatically effective only upon (i) written notice to the City of the assignment; and (ii) delivery to the City of an assignment and assumption document fully executed by owner and the assignee, whereby the Owner's RWDS Capacity is assigned to the purchaser of the Property, the assignor disclaims any right or interest in the Owner's RWDS Capacity or under this Agreement, and the purchaser assumes all of Owner's obligations hereunder. Following the effective date of the assignment, the assignee will be deemed to be the "Owner" under this Agreement.

Owner may assign all of Owner's RWDS Capacity to a purchaser of a portion of the Property. Such an assignment will be automatically effective only when the actions described in subparagraphs 16.1(i) and (ii) are taken and, in addition, (a) the assignee has amended this Agreement to change the legal description of the Property to correspond to the property purchased by assignee; and (b) if the portion of the Property retained by Owner has an existing use served by Non-Potable Water delivered through the RWDS, the City has approved in writing the assignment of the entire Owner's RWDS Capacity. Following the effective date of the assignment, the assignee will be deemed to be the "Owner" under this Agreement.

16.2 Assignment of Partial Capacity. From time to time, Owner may assign a portion of Owner's RWDS Capacity to a purchaser of a portion of the Property. Such assignment will be automatically effective only upon (i) written notice to the City of the assignment; (ii) approval by the City in writing of the amount of the Owner's RWDS Capacity assigned to the assignee, taking into consideration the existing and proposed Non-Potable Water uses permitted under this Agreement at that portion of the Property purchased by the assignee; (iii) execution and delivery by the assignee of a Pipeline Capacity Agreement substantially in the form of this Agreement (but not requiring any purchase payments under Section 3), reflecting the amount of the Owner's RWDS Capacity assigned to the assignee; (iv) approval by the City in writing of the amount of Owner's RWDS Capacity retained by the Owner, taking into consideration the existing and proposed Non-Potable Water uses permitted under this Agreement at that portion of the Property retained by Owner; (v) amendment of this Agreement to reduce the Owner's RWDS Capacity by the amount assigned to assignee and to change the legal description of the Property; and (vi) delivery by Owner of a disclaimer of any right or interest in that portion of the Owner's RWDS Capacity assigned by Owner.

16.3 Assignment of Capacity to City. From time to time, Owner may assign part or all of Owner's RWDS Capacity to the City. Such assignment will be effective automatically only upon (i) written notice of the assignment to the City; (ii) delivery by Owner of a disclaimer of any right or interest in the Owner's RWDS Capacity assigned to the City; (iii) if the Property has an existing use served by Non-Potable Water delivered through the RWDS, approval by the City in writing of the amount of the Owner's RWDS Capacity retained by the Owner; and (iv) in the case of an assignment of part of Owner's RWDS Capacity, amendment of this Agreement to reduce the Owner's RWDS Capacity by the amount assigned to the City.

Thereafter, the City will reimburse Owner for the cost of that portion of the Owner's RWDS Capacity assigned to the City, on the following terms:

(a) Owner will be entitled to a reimbursement equal to the amount paid by Owner under paragraph 3 hereof, or a fraction of that amount proportionate to the Owner's RWDS Capacity assigned to the City, (the "Reimbursable Amount"). For example, if Owner purchases one million gallons of Owner's RWDS Capacity and assigns 250,000 gallons to the City, the Reimbursable Amount would be equal to one-quarter of the amount paid by Owner under paragraph 3.

(b) The Reimbursable Amount will bear interest at the lesser of 11 percent per annum or the rate of interest earned by City and DMP on amounts owed to each of them under the RWDS Agreement, as amended from time to time. The interest shall accrue from the date Owner assigns the Owner's RWDS Capacity to the City, compounded annually on the anniversary date of the assignment.

(c) The City will pay the Reimbursable Amount to Owner solely from amounts paid by other parties to the City for the purpose of purchasing capacity in the RWDS (the "RWDS Hook-up Fees"). Owner acknowledges and agrees that the City will disburse each RWDS Hook-up Fee, first to the City until the City has received a total of \$1,000,000 in RWDS Hook-up Fees from and after the completion of the RWDS and, second, to the City to pay for Additional Pumps, if the City determines in the City's sole discretion that a part of the RWDS Hook-up Fee is needed to pay for Additional Pumps. After making those priority disbursements of the RWDS Hook-up Fees, the City will disburse to Owner the Owner's Pro Rata Amount (defined below) of the remainder of the RWDS Hook-up Fee. The City will disburse to Owner the Owner's Pro Rata Amount of the remainder of each successive RWDS Hook-up Fee until Owner has received the full amount of its Reimbursable Amount, plus all accrued interest, or until the date twenty (20) years after the Owner's RWDS Capacity is assigned to the City, whichever occurs first. Following either such event the City shall have no obligation to pay to Owner any part of any RWDS Hook-up Fees received by City.

(d) Owner acknowledges and agrees that Owner will receive disbursements of RWDS Hook-up Fees on a pro-rata basis, by sharing the remainder of each RWDS Hook-

up Fee with the City, DMP and any other party who has returned any of their Owner's RWDS Capacity to the City. The City will determine the share of the remainder of each RWDS Hook-up Fee to be paid to Owner (the "Owner's Pro Rata Amount") by dividing the remaining balance due to Owner, plus accrued interest, by the total of (i) the balance due to Owner plus accrued interest, (ii) the balances due, plus accrued interest, to any other persons who have assigned their Owner's RWDS Capacity to the City; (iii) the balance due, plus accrued interest, to DMP, as calculated by the City pursuant to the RWDS Agreement; and (iv) the balance due, plus accrued interest, to the City, as calculated by the City pursuant to the RWDS Agreement. The City will adjust the Owner's Pro Rata Amount at the time or times that any person assigns its Owner's RWDS Capacity to the City or that any person (including the City and DMP) is no longer entitled to receive reimbursements from RWDS Hook-up Fees.

(e) Owner acknowledges and agrees that the City is not and shall not be deemed to be guaranteeing to Owner a return of the Reimbursable Amount, or any interest accrued thereon. The Owner's actual receipt of the Reimbursable Amount depends on whether any other parties pay the RWDS Hook-up Fees, the timing of those payments, the priority of Owner's right to receive those payments and the Owner's Pro Rata Amount. Absent any breach by the City under this Section 16.3, the City shall have absolutely no liability to pay any part of the Reimbursable Amount, or interest thereon, to Owner.

16.4 No Other Assignment. Except as specifically provided herein, Owner will not assign, transfer or convey, in whole or in part, the Owner's RWDS Capacity. Owner's agreement to the limitation provided in this paragraph is an express and irrevocable condition to the City's execution of this Agreement.

16.5 Collateral Assignment. Owner may collaterally assign its interest in this Agreement as security for a loan or other obligation provided that the loan or other obligation is also secured by a security interest in or lien upon all of the Property. Nothing in this Section shall expand in any way the rights under this Agreement of Owner, or any successor, to the delivery of non-potable water through the RWDS. Accordingly, an entity that forecloses upon a security interest in Owner's interest in this Agreement shall be entitled to the delivery of non-potable Water through the RWDS only if (i) it has foreclosed upon and taken title to all of the Property and (ii) it has complied with the provisions of Section 16.1 necessary to substitute as the Owner under this Agreement. A former owner of the Property may hold a collateral interest in this Agreement under this section. If so, any disclaimer of interest made by that former owner under Section 16.1 or 16.2 will not disclaim the former owner's interest as a collateral assignee.

17. NOTICES AND FILINGS.

17.1 Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given,

filed, made, delivered or served in writing and delivered personally or sent by certified United States Mail, postage prepaid, return receipt requested, to:

The City City of Scottsdale
 3939 Civic Center Boulevard
 Scottsdale, Arizona 85251
 Attn: General Manager, Water Resources Department

with a copy to: City Attorney's Office
 3939 Civic Center Boulevard
 Scottsdale, Arizona 85251
 Attn: City Attorney

Owner: Boulders Joint Venture
 c/o The Westcor Company Limited Partnership
 P. O. Box 5293
 Carefree, Arizona 85377

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

17.2 Mailing Effective. Notices, filings, consents, approvals and communication given by mail shall be deemed delivered upon the earlier of actual delivery or twenty-four (24) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

18. GENERAL

18.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any party to this Agreement of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

18.2 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

18.3 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

18.4 Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

18.5 Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

18.6 Term. Unless terminated pursuant to this Agreement, this Agreement shall continue in full force and effect in perpetuity.

18.7 No Partnership: Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the City and Owner or other purchasers of RWDS capacity. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

18.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

18.9 Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto.

18.10 Good Standing: Authority. Each of the parties represents and warrants to the other (i) that it is duly formed, validly existing and in good standing under all applicable laws and (ii) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

18.11 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City or Owner from undertaking any contractual commitment to perform any act hereunder, this Agreement shall be deemed to permit the City or Owner to take such action at its discretion.

18.12 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona including, without limitation, the provisions of A.R.S. Section 38-511.

18.13 Time of Essence. Time is of the essence of this Agreement.

18.14 Hold Harmless.

18.14.1 Owner agrees to indemnify, defend and hold the City harmless from any and all costs, losses, judgments or claims of any sort by third parties arising from, caused by or related to Owner's negligent acts or omissions in construction of the Main Line, use of the water from the RWDS, or in performing its obligations under this Agreement.

18.14.2 City agrees to indemnify, defend and hold Owner harmless from any and all costs, losses, judgments or claims of any sort by third parties arising from, caused by or related to the City's negligent acts or omissions in performing its obligations under this Agreement.

18.15 Attorneys' Fees. If any action is brought by any party to this Agreement with respect to its rights under this Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees and court costs from the other party or parties as determined by the court.

18.16 Binding Effect. Subject to the terms and conditions of Section 16, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

"CITY"

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____

Herbert R. Drinkwater
Mayor

Attest:

Sonia Robertson
Sonia Robertson, City Clerk

Approved as to form:

Barbara R. Goldberg
for Richard W. Garnett III, City Attorney

"OWNER"

BOULDERS JOINT VENTURE, a joint venture formed under the Arizona Uniform Partnership Act

BY: THE WESTCOR COMPANY
LIMITED PARTNERSHIP, an Arizona limited partnership, General Partner

By: _____

Its General Partner

EXHIBIT A

PROPERTY DESCRIPTION
GOLF COURSE HOLES 1 AND 4
AT THE BOULDERS

That part of the Southwest quarter of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the West quarter corner of said Section 2 as shown on the plat for BOULDERS CAREFREE PARCEL "E", according to Book 343 of Maps, Page 18, records of Maricopa County;

thence South 89 degrees 02 minutes 09 seconds East along the North line of said Southwest quarter a distance of 950.68 feet to a boundary corner of said Parcel "E", said point being the TRUE POINT OF BEGINNING;

thence continuing South 89 degrees 02 minutes 09 seconds East along said North line a distance of 167.94 feet;

thence South 39 degrees 43 minutes 45 seconds East along the boundary of said Parcel "E" a distance of 329.48 feet to a point herein described as point "A";

thence South 74 degrees 11 minutes 43 seconds West continuing along said boundary a distance of 110.52 feet to the beginning of a curve concave southeasterly and having a radius of 300.00 feet;

thence southwesterly along said boundary and the arc of said curve through a central angle of 19 degrees 29 minutes 28 seconds a distance of 102.06 feet;

thence North 28 degrees 40 minutes 19 seconds continuing along said boundary a distance of 376.27 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 59,084 square feet or 1.3564 acres more or less.

Together with the following described parcel:

BEGINNING at said Point "A" in the above described parcel;

thence South 39 degrees 43 minutes 45 seconds East 43.76 feet to a boundary corner of said Parcel "E" and the TRUE POINT OF BEGINNING, the following courses follow said boundary of Parcel "E" until otherwise noted;

thence continuing South 39 degrees 43 minutes 45 seconds East 436.89 feet;

thence South 31 degrees 30 minutes 59 seconds East 104.19 feet;

thence South 28 degrees 57 minutes 15 seconds East 38.86 feet;

thence South 16 degrees 41 minutes 44 seconds East 77.45 feet;

thence South 36 degrees 53 minutes 27 seconds East 110.07 feet to the beginning of a curve concave southwesterly and having a radius of 130.00 feet;

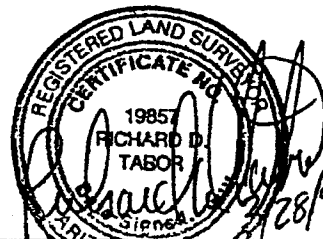
thence southeasterly along the arc of said curve through a central angle of 17 degrees 39 minutes 32 seconds a distance of 40.07 feet to a point of tangency;

thence South 19 degrees 13 minutes 55 seconds East 112.00 feet to the beginning of a curve concave westerly and having a radius

of 80.00 feet;
thence southerly along the arc of said curve through a central angle of 55 degrees 16 minutes 58 seconds a distance of 77.19 feet;
thence South 57 degrees 03 minutes 22 seconds East 55.10 feet;
thence North 83 degrees 20 minutes 10 seconds East 82.27 feet;
thence South 04 degrees 41 minutes 15 seconds East leaving said boundary of Parcel "E" a distance of 205.64 feet to a point on the northerly right-of-way line of Clubhouse Drive as described in Instrument number 85-584550, records of Maricopa County;
thence South 85 degrees 35 minutes 38 seconds West along said right-of-way 161.13 feet to the begining of a curve concave northeasterly and having a radius of 182.00 feet;
thence westerly along said right-of-way and the arc of said curve through a central angle of 25 degrees 24 minutes 22 seconds a distance of 80.70 feet to a point of tangency;
thence North 69 degrees 00 minutes 00 seconds West along said right-of-way 34.92 feet to the beginning of a curve concave southwesterly and having a radius of 217.63 feet;
thence northwesterly along said right-of-way and the arc of said curve through a central angle of 21 degrees 00 minutes 00 seconds a distance of 79.77 feet to a point of tangency;
thence West along said right-of-way 129.59 feet;
thence North leaving said right-of-way 7.00 feet to the beginning of a curve, the radius of which bears South a distance of 1025.00 feet therefrom;
thence westerly along the arc of said curve through a central angle of 05 degrees 51 minutes 38 seconds a distance of 104.84 feet to a point of tangency;
thence South 84 degrees 08 minutes 22 seconds West 45.02 feet to the beginning of a curve concave northeasterly and having a radius of 155.00 feet;
thence northwesterly along the arc of said curve through a central angle of 31 degrees 02 minutes 53 seconds a distance of 83.99 feet to a point of tangency;
thence North 64 degrees 48 minutes 45 seconds West 6.09 feet to the beginning of a curve concave southwesterly and having a radius of 205.00 feet;
thence northwesterly along the arc of said curve through a central angle of 30 degrees 45 minutes 12 seconds a distance of 110.03 feet to a point of tangency;
thence South 84 degrees 26 minutes 03 seconds West 41.85 feet to the beginning of a curve concave northeasterly and having a radius of 155.00 feet;
thence northwesterly along the arc of said curve through a central angle of 50 degrees 15 minutes 17 seconds a distance of 135.95 feet to a point of tangency;
thence North 45 degrees 18 minutes 40 seconds West 272.28 feet to the beginning of a curve concave southwesterly an having a radius of 275.00 feet;
thence northwesterly along the arc of said curve through a central angle of 30 degrees 30 minutes 30 seconds a distance of 146.43 feet to a point of tangency;

thence North 75 degrees 49 minutes 11 seconds West 71.88 feet to
 the beginning of a curve concave northeasterly and having a
 radius of 209.21 feet;
 thence northwesterly along the arc of said curve through a central
 angle of 30 degrees 55 minutes 48 seconds a distance of 112.94
 feet to the beginning of a reverse curve concave southwesterly
 and having a radius of 350.00 feet;
 thence northwesterly along the arc of said curve through a central
 angle of 13 degrees 10 minutes 48 seconds a distance of 80.51
 feet to the beginning of a reverse curve concave northeasterly
 and having a radius of 12.00 feet;
 thence northwesterly along the arc of said curve through a central
 angle of 75 degrees 30 minutes 41 seconds a distance of 15.82
 feet to a point of tangency;
 thence North 17 degrees 26 minutes 31 seconds East 40.64 feet to
 the beginning of a curve concave southeasterly and having a
 radius of 175.00 feet;
 thence northeasterly along the arc of said curve through a central
 angle of 30 degrees 35 minutes 51 seconds a distance of 93.45
 feet to a point of tangency;
 thence North 48 degrees 02 minutes 21 seconds East 63.42 feet to
 the beginning of a curve concave northwesterly and having a
 radius of 275.00 feet;
 thence northeasterly along the arc of said curve through a central
 angle of 13 degrees 17 minutes 48 seconds a distance of 63.82
 feet to a point on said boundary of Parcel "E", the following
 courses follow said boundary to the end of this description;
 thence South 48 degrees 17 minutes 07 seconds East leaving said
 curve a distance of 111.00 feet;
 thence South 77 degrees 33 minutes 43 seconds East 153.34 feet;
 thence South 50 degrees 11 minutes 59 seconds East 215.18 feet;
 thence South 55 degrees 04 minutes 43 seconds East 211.86 feet;
 thence South 79 degrees 26 minutes 53 seconds East 393.82 feet;
 thence North 32 degrees 44 minutes 15 seconds West 319.86 feet;
 thence North 20 degrees 13 minutes 18 seconds West 93.87 feet;
 thence North 28 degrees 40 minutes 19 seconds West 412.58 feet to
 a point on a curve, the radius of which bears South 36 degrees
 19 minutes 14 seconds East a distance of 260.00 feet
 therefrom;
 thence northeasterly along the arc of said curve through a central
 angle of 20 degrees 30 minutes 57 seconds a distance of 93.10
 feet to a point of tangency;
 thence North 74 degrees 11 minutes 43 seconds East 128.27 feet to
 the TRUE POINT OF BEGINNING.

Said parcel contains 666,950 square feet or 15.3111 acres more or
 less, the 2 parcels combined contain 16.6675 acres more or less.



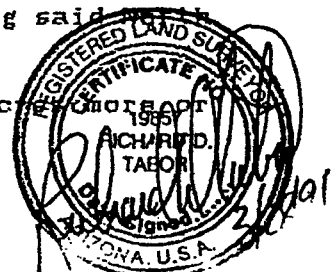
PROPERTY DESCRIPTION
GOLF COURSE HOLES 2 AND 3
AT THE BOULDERS

That part of the Southwest quarter of Section 2 and the Southeast quarter of Section 3, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the West quarter corner of said Section 2;
thence South 89 degrees 02 minutes 09 seconds East along the North line of said Southwest quarter a distance of 428.07 feet to the Northwest boundary corner of BOULDERS CAREFREE PARCEL "E", according to Book 343 of Maps, Page 18, records of Maricopa County, the following courses follow the westerly boundary of said Parcel "E" until otherwise noted;
thence South 00 degrees 58 minutes 53 seconds West 159.63 feet;
thence South 05 degrees 33 minutes 13 seconds East 107.50 feet to a point on a curve, the radius of which bears South 07 degrees 32 minutes 41 seconds East a distance of 170.00 feet therefrom;
thence southwesterly along the arc of said curve through a central angle of 15 degrees 55 minutes 09 seconds a distance of 47.23 feet to a point of tangency;
thence South 66 degrees 32 minutes 10 seconds West 58.59 feet to the beginning of a curve concave northwesterly and having a radius of 135.00 feet;
thence southwesterly along the arc of said curve through a central angle of 28 degrees 47 minutes 42 seconds a distance of 67.85 feet to the beginning of a compound curve concave northeasterly and having a radius of 12.00 feet;
thence northwesterly along the arc of said curve through a central angle of 66 degrees 15 minutes 05 seconds a distance of 13.88 feet to the beginning of a reverse curve concave southerly and having a radius of 45.00 feet;
thence westerly along the arc of said curve through a central angle of 131 degrees 08 minutes 54 seconds a distance of 103.00 feet;
thence North 89 degrees 26 minutes 05 seconds West leaving said curve a distance of 229.73 feet;
thence South 24 degrees 24 minutes 01 seconds West 347.53 feet;
thence North 80 degrees 38 minutes 53 seconds East 418.51 feet to the beginning of a non-tangent curve, the radius of which bears South 06 degrees 01 minutes 54 seconds West a distance of 100.53 feet therefrom;
thence southeasterly along the arc of said curve through a central angle of 44 degrees 31 minutes 02 seconds a distance of 78.11 feet to the beginning of a non-tangent curve, the radius of which bears South 46 degrees 22 minutes 10 seconds West a distance of 100.00 feet therefrom;
thence southeasterly along the arc of said curve through a central angle of 20 degrees 41 minutes 15 seconds a distance of 36.11 feet to the beginning of a non-tangent curve, the radius of which bears South 83 degrees 57 minutes 42 seconds West a

distance of 75.00 feet therefrom;
 thence southwesterly along the arc of said curve through a central
 angle of 63 degrees 23 minutes 15 seconds a distance of 82.97
 feet to a point of tangency;
 thence South 57 degrees 20 minutes 57 seconds West 45.50 feet;
 thence South 06 degrees 04 minutes 59 seconds East 69.26 feet;
 thence South 58 degrees 13 minutes 23 seconds East 56.93 feet;
 thence South 86 degrees 03 minutes 28 seconds East 119.38 feet;
 thence South 17 degrees 26 minutes 31 seconds West leaving the
 boundary of said Parcel "E" a distance of 26.30 feet to the
 beginning of a curve concave northwesterly and having a radius
 of 12.00 feet;
 thence southwesterly along the arc of said curve through a central
 angle of 92 degrees 37 minutes 23 seconds a distance of 19.40
 feet to the beginning of a reverse curve concave southeasterly
 and having a radius of 350.00 feet;
 thence southwesterly along the arc of said curve through a central
 angle of 57 degrees 12 minutes 42 seconds a distance of 349.49
 feet to a point of tangency, said point lying on the northerly
 right-of-way line of Boulder Pass as described in Instrument
 number 85-584550, records of Maricopa County;
 thence South 52 degrees 51 minutes 12 seconds West along said
 right-of-way 48.44 feet to the beginning of a curve concave
 northwesterly and having a radius of 75.00 feet;
 thence southwesterly along said right-of-way and the arc of said
 curve through a central angle of 37 degrees 08 minutes 48
 seconds a distance of 48.62 feet to a point of tangency;
 thence West along said right-of-way 119.25 feet to the beginning of
 a curve concave southeasterly and having a radius of 125.00
 feet;
 thence southwesterly along said right-of-way and the arc of said
 curve through a central angle of 28 degrees 13 minutes 51
 seconds a distance of 61.59 feet to a point of tangency;
 thence South 61 degrees 46 minutes 09 seconds West along said
 right-of-way 78.46 feet to the beginning of a curve concave
 northwesterly and having a radius of 75.00 feet;
 thence westerly along said right-of-way and the arc of said curve
 through a central angle of 38 degrees 33 minutes 43 seconds a
 distance of 50.48 feet to a point of tangency;
 thence North 79 degrees 40 minutes 08 seconds West along said right-
 of-way 154.04 feet to a point on the East right-of-way line of
 Tom Darlington as shown on the Map of Dedication recorded in
 Book 303 of Maps, Page 29, records of Maricopa County;
 thence North 10 degrees 19 minutes 52 seconds East along the last
 described right-of-way line 999.12 feet to a point on the
 North line of the Southeast quarter of said Section 3;
 thence South 88 degrees 59 minutes 05 seconds East along said
 line 300.28 feet to the POINT OF BEGINNING.

Said parcel contains 554,642 square feet or 12.7328 acres
 less.



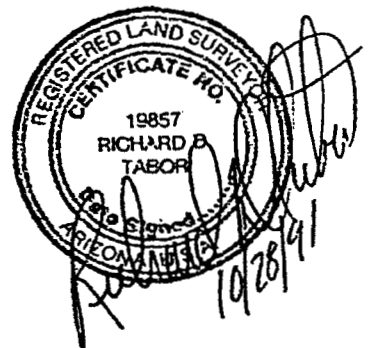
PROPERTY DESCRIPTION
GOLF COURSE HOLES 12 AND 13
AT THE BOULDERS

That part of the Southeast quarter of Section 2 and the Northeast quarter of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 11;
thence North 88 degrees 58 minutes 11 seconds West along the North line of said Northeast quarter a distance of 315.80 feet to the TRUE POINT OF BEGINNING;
thence South 16 degrees 09 minutes 50 seconds East 69.38 feet;
thence South 09 degrees 33 minutes 05 seconds East 788.46 feet to the beginning of a curve concave northwesterly and having a radius of 75.00 feet;
thence southwesterly along the arc of said curve through a central angle of 158 degrees 05 minutes 00 seconds a distance of 206.93 feet;
thence South 02 degrees 27 minutes 25 seconds East leaving said curve a distance of 483.03 feet;
thence South 06 degrees 09 minutes 38 seconds West 508.32 feet to the beginning of a curve concave northerly and having a radius of 75.00 feet;
thence westerly along the arc of said curve through a central angle of 162 degrees 30 minutes 16 seconds a distance of 212.72 feet to a point of tangency;
thence North 11 degrees 20 minutes 06 seconds West 348.18 feet;
thence North 10 degrees 16 minutes 43 seconds West 160.51 feet;
thence North 01 degrees 39 minutes 58 seconds West 561.39 feet;
thence North 68 degrees 41 minutes 38 seconds East 107.58 feet;
thence South 84 degrees 42 minutes 37 seconds East 144.06 feet;
thence North 50 degrees 45 minutes 27 seconds East 46.55 feet;
thence North 17 degrees 44 minutes 22 seconds West 205.62 feet;
thence North 28 degrees 13 minutes 32 seconds West 296.86 feet;
thence North 20 degrees 23 minutes 33 seconds West 181.33 feet;
thence North 01 degrees 41 minutes 05 seconds West 141.34 feet;
thence North 39 degrees 25 minutes 45 seconds West 100.32 feet;
thence South 67 degrees 45 minutes 07 seconds West 63.53 feet;
thence South 67 degrees 45 minutes 07 seconds West 148.12 feet to a point on the easterly right-of-way line of Ironwood Drive as recorded in instrument number 89-286513, records of Maricopa County;
thence North 43 degrees 00 minutes 19 seconds West along said right-of-way a distance of 226.19 feet;
thence North 64 degrees 57 minutes 04 seconds East leaving said right-of-way a distance of 39.95 feet;
thence South 43 degrees 00 minutes 19 seconds East 138.00 feet;
thence South 87 degrees 59 minutes 28 seconds East 91.93 feet;
thence North 70 degrees 08 minutes 01 seconds East 44.27 feet;
thence North 30 degrees 16 minutes 43 seconds East 115.33 feet;
thence North 16 degrees 09 minutes 50 seconds West 79.94 feet to the beginning of a curve concave southeasterly and having a

radius of 150.00 feet;
thence northeasterly along the arc of said curve through a central
angle of 180 degrees 00 minutes 00 seconds a distance of
471.24 feet to a point of tangency;
thence South 16 degrees 09 minutes 50 seconds East 358.59 to the
TRUE POINT OF BEGINNING.

Said parcel contains 642,938 square feet or 14.7598 acres more or
less.



PROPERTY DESCRIPTION SKETCH HOLES 12 & 13 AT THE BOULDERS (REVISED 10-28-91)

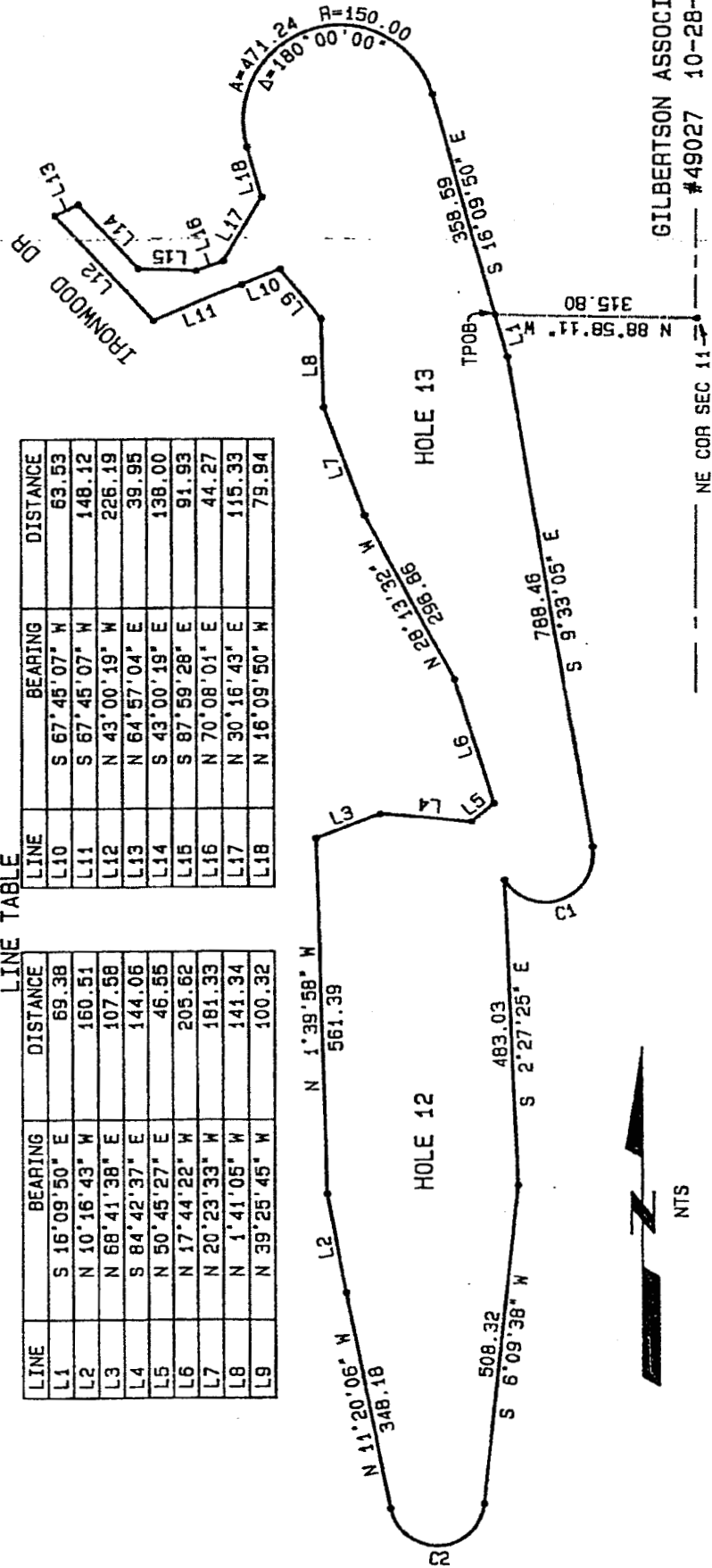
CURVE TABLE

CURVE	ARC	DELTA	RADIUS
C1	206.93	158°05'00"	75.00
C2	212.72	162°30'16"	75.00

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 16°09'50" E	69.38
L2	N 10°16'43" W	160.51
L3	N 68°41'38" E	107.58
L4	S 84°42'37" E	144.06
L5	N 50°45'27" E	46.55
L6	N 17°44'22" W	205.62
L7	N 20°23'33" W	181.33
L8	N 1°41'05" W	141.34
L9	N 39°25'45" W	100.32

LINE	BEARING	DISTANCE
L10	S 67°45'07" W	63.53
L11	S 67°45'07" W	148.12
L12	N 43°00'19" W	226.19
L13	N 64°57'04" E	39.95
L14	S 43°00'19" E	138.00
L15	S 87°59'28" E	91.93
L16	N 70°08'01" E	44.27
L17	N 30°16'43" E	115.33
L18	N 16°09'50" W	79.94



NTS

GILBERTSON ASSOCIATES
#49027 10-28-91
NE COR SEC 11

PROPERTY DESCRIPTION
GOLF COURSE HOLE NUMBER 14
AT THE BOULDERS

That part of the North half of Section 11, and the South half of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

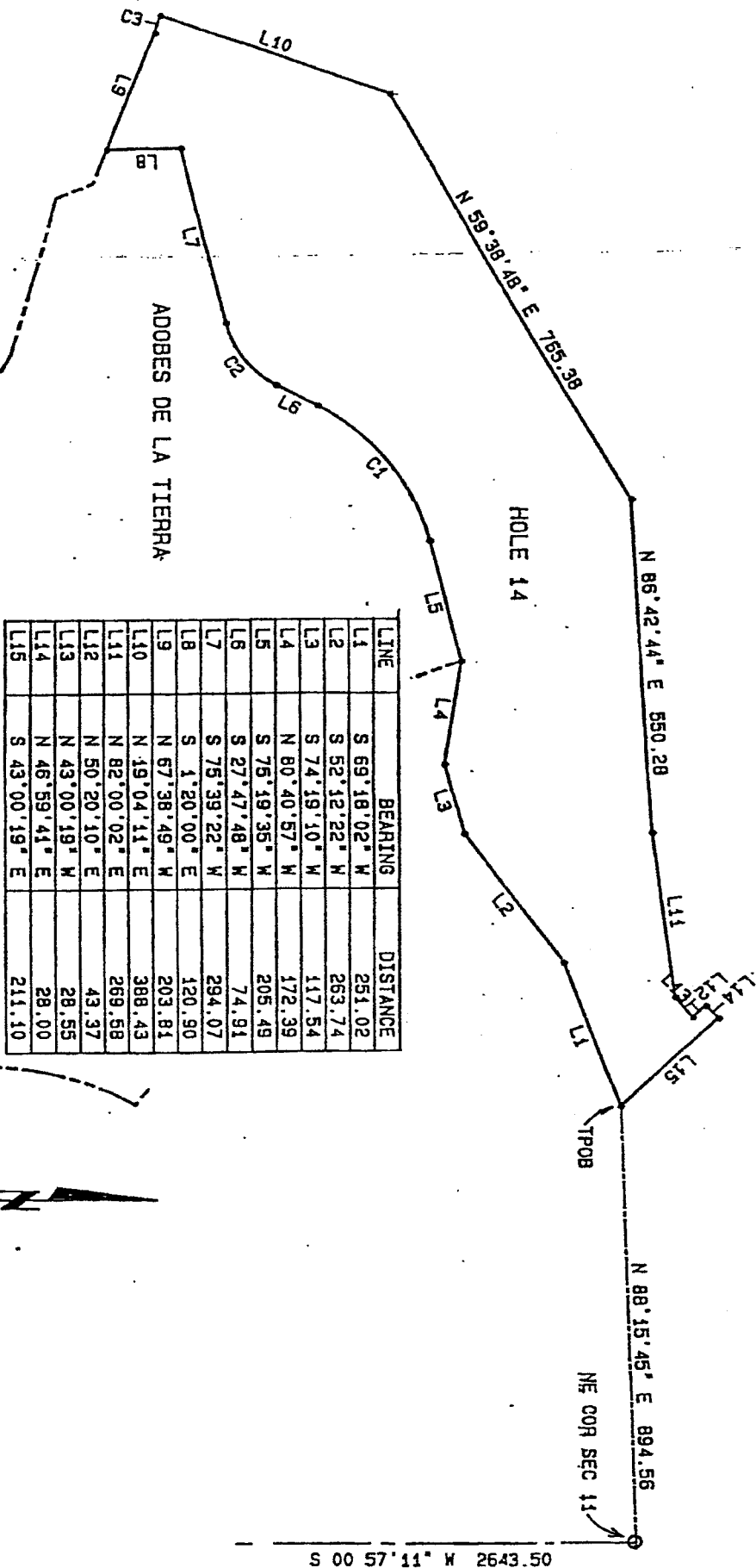
BEGINNING at the Northeast corner of said Section 11, from which the East quarter corner of said Section 11 bears South 00 degrees 57 minutes 11 seconds West a distance of 2643.50 feet therefrom; thence South 88 degrees 15 minutes 45 seconds West 894.56 feet to a point on the westerly right-of-way line of Ironwood Drive, said point being the TRUE POINT OF BEGINNING; thence South 69 degrees 18 minutes 02 seconds West 251.02 feet; thence South 52 degrees 12 minutes 22 seconds West 263.74 feet; thence South 74 degrees 19 minutes 10 seconds West 117.54 feet; thence North 80 degrees 40 minutes 57 seconds West 172.39 feet to a corner in the northerly boundary of Adobe de la Tierra as shown on the Plat recorded in Book 310 of Maps, Page 23 records of Maricopa County; thence South 75 degrees 19 minutes 35 seconds West along said northerly boundary a distance of 205.49 feet to the beginning of a curve concave southeasterly and having a radius of 350.13 feet; thence southwesterly along said northerly boundary and the arc of said curve through a central angle of 47 degrees 31 minutes 47 seconds a distance of 290.45 feet to a point of tangency; thence South 27 degrees 47 minutes 48 seconds West along said northerly boundary a distance of 74.91 feet to the beginning of a curve concave northwesterly and having a radius of 160.26 feet; thence southwesterly along said northerly boundary and the arc of said curve through a central angle of 47 degrees 51 minutes 35 seconds a distance of 133.87 feet to a point of tangency; thence South 75 degrees 39 minutes 22 seconds West along said northerly boundary a distance of 294.07 feet; thence South 01 degrees 20 minutes 00 seconds East along said northerly boundary a distance of 120.90 feet to a corner in said northerly boundary; thence North 67 degrees 38 minutes 49 seconds West leaving said northerly boundary a distance of 203.81 feet to the beginning of a curve concave southwesterly and having a radius of 150.00 feet; thence northwesterly along the arc of said curve through a central angle of 11 degrees 14 minutes 54 seconds a distance of 29.45 feet; thence North 19 degrees 04 minutes 11 seconds East leaving said curve a distance of 388.43 feet; thence North 59 degrees 38 minutes 48 seconds East 765.38 feet; thence North 86 degrees 42 minutes 44 seconds East 550.28 feet; thence North 82 degrees 00 minutes 02 seconds East 269.58 feet; thence North 50 degrees 20 minutes 10 seconds East 43.37 feet;

thence North 43 degrees 00 minutes 19 seconds East 28.55 feet;
thence North 46 degrees 59 minutes 41 seconds East 28.00 feet to a
point on the westerly right-of-way line of said Ironwood
Drive;
thence South 43 degrees 00 minutes 19 seconds East along said
right-of-way a distance of 211.10 feet to the TRUE POINT OF
BEGINNING.

Said parcel contains 558,992 square feet or 12.8327 acres more or
less.



PROPERTY DESCRIPTION SKETCH HOLE 14 AT THE BOULDERS



LINE	BEARING	DISTANCE
L1	S 69°18'02\" W	251.02
L2	S 52°12'22\" W	263.74
L3	S 74°19'10\" W	117.54
L4	N 80°40'57\" W	172.39
L5	S 75°19'35\" W	205.49
L6	S 27°47'48\" W	74.91
L7	S 75°39'22\" W	294.07
L8	S 1°20'00\" E	120.90
L9	N 67°38'49\" W	203.81
L10	N 19°04'11\" E	388.43
L11	N 82°00'02\" E	269.58
L12	N 50°20'10\" E	43.37
L13	N 43°00'19\" W	28.55
L14	N 46°59'41\" E	28.00
L15	S 43°00'19\" E	211.10

CURVE	ARC	DELTA	RADIUS
C1	290.45	47°31'47\"	350.13
C2	133.67	47°51'35\"	160.26
C3	29.45	11°14'54\"	150.00

GILBERTSON ASSOCIATES
#49027 4-8-91

S 00 57'11\" W 2643.50

PROPERTY DESCRIPTION
LAKE AREA

That part of the Southeast quarter of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 2;
thence North 00 degrees 44 minutes 34 seconds East along the West line of said Southeast quarter a distance of 673.50 feet;
thence South 89 degrees 15 minutes 26 seconds East 53.69 feet to the TRUE POINT OF BEGINNING;
thence North 38 degrees 32 minutes 54 seconds East 46.80 feet;
thence North 04 degrees 17 minutes 33 seconds West 47.06 feet;
thence North 65 degrees 43 minutes 40 seconds East 60.75 feet;
thence South 74 degrees 48 minutes 51 seconds East 54.42 feet;
thence South 20 degrees 47 minutes 02 seconds East 34.90 feet;
thence South 58 degrees 50 minutes 42 seconds East 110.72 feet;
thence South 36 degrees 05 minutes 19 seconds East 129.77 feet;
thence South 07 degrees 31 minutes 23 seconds West 69.03 feet;
thence South 56 degrees 50 minutes 07 seconds West 62.88 feet;
thence North 53 degrees 21 minutes 14 seconds West 107.63 feet;
thence South 68 degrees 30 minutes 14 seconds West 70.79 feet;
thence North 39 degrees 58 minutes 06 seconds West 128.09 feet;
thence North 17 degrees 22 minutes 47 seconds West 70.09 feet to the TRUE POINT OF BEGINNING.

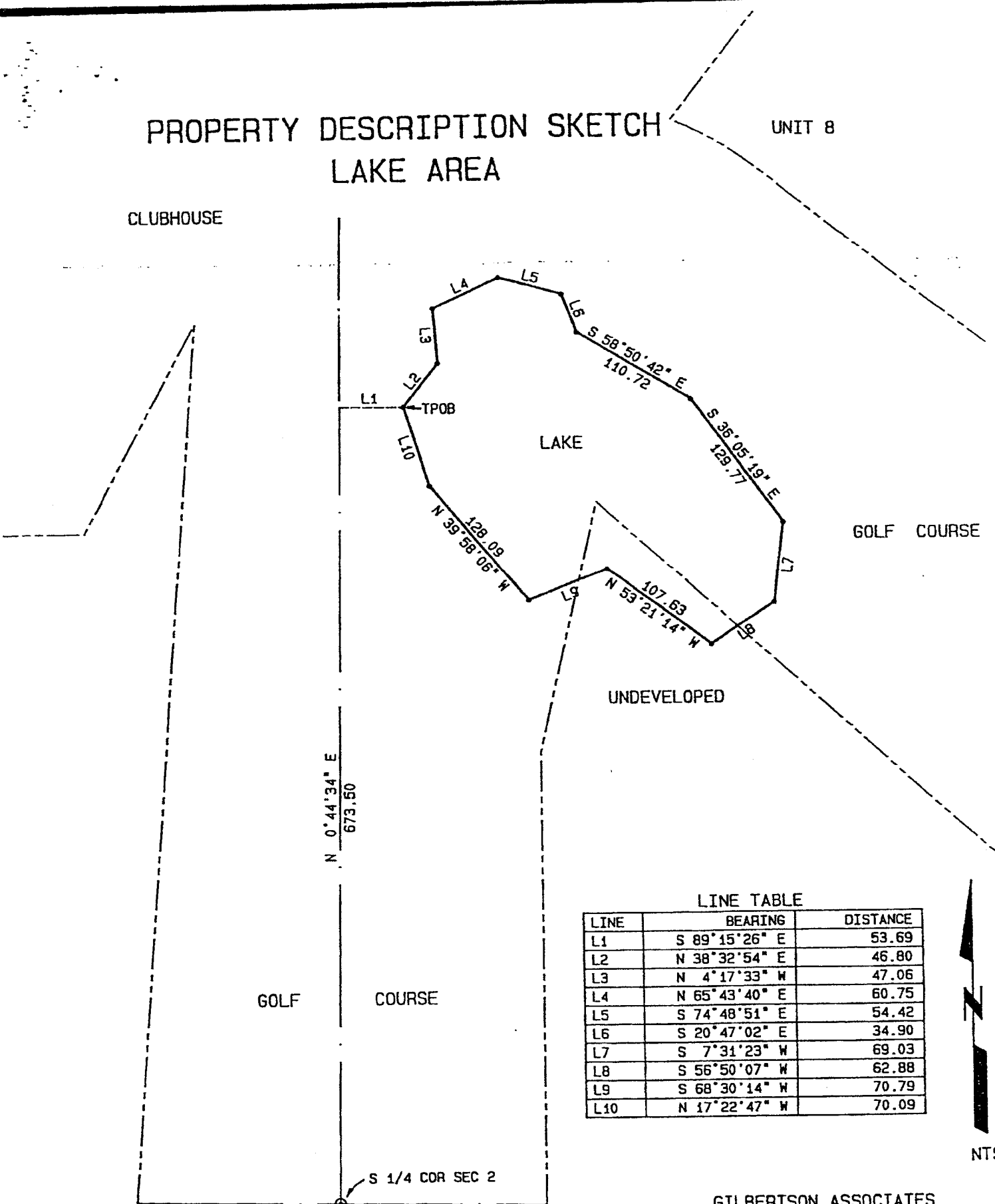
Said parcel contains 57,440 square feet or 1.3187 acres more or less.



PROPERTY DESCRIPTION SKETCH LAKE AREA

UNIT 8

CLUBHOUSE



LINE TABLE

LINE	BEARING	DISTANCE
L1	S 89°15'26" E	53.69
L2	N 38°32'54" E	46.80
L3	N 4°17'33" W	47.06
L4	N 65°43'40" E	60.75
L5	S 74°48'51" E	54.42
L6	S 20°47'02" E	34.90
L7	S 7°31'23" W	69.03
L8	S 56°50'07" W	62.88
L9	S 68°30'14" W	70.79
L10	N 17°22'47" W	70.09



NTS

GILBERTSON ASSOCIATES
#49027 12-12-91

EXHIBIT B-1

NON-POTABLE WATER RATES

No less than annually, through the City's budgetary process, the City shall establish a non-potable water rate schedule that includes any and all costs to own and operate the system, including but not limited to, the following components:

1. Cost of water purchased from the Central Arizona Project (CAP) or any other non-potable water source.
 2. Operation and maintenance of the filtration and disinfection system and any other components at the Wastewater Treatment plant required to treat secondary effluent so that it can be used to supply effluent to the RWDS.
 3. Actual energy costs for five (5) pump stations required to deliver water from the Central Arizona Project Canal and the Wastewater Treatment plant to the turf projects. This includes the CAP pump station, pump stations A, B, C, and D and any additional pump stations required.
 4. The actual costs to maintain and operate the pump stations, RWDS Trunk Lines, the 8 million gallon reservoir and the Main Lines.
 5. Repairs to and replacement of the pump stations and pipeline system.
 6. A percentage factor for General Fund administration, accounting and billing consistent with the factor charged to all other Water Resources Department customers in the City of Scottsdale.
 7. A percentage factor for Water Resources Department administration, accounting and billing.
 8. A Franchise Fee consistent with the percentage charged to all other Water Resources Department customers in the City of Scottsdale.
 9. An in-lieu property tax payment to the General Fund consistent with the payment charged to all other Water Resources Department customers in the City of Scottsdale.
 10. The costs to amortize loans obtained by the City for the purpose of replacement and/or construction of additional or existing components of the pump stations, RWDS Trunk Line, 8 million gallon reservoir, Main Lines and filtration and disinfection system and any other components at the Wastewater Treatment Plant required to treat secondary effluent so that it can be used to supply effluent to the RWDS. In the case of Main Lines and Pump Stations
-

on the Main Lines, this provision shall not include the construction of facilities to serve property for the first time.

11. A component charge to provide for a replacement/construction fund.
12. Establishment over the first twelve (12) months of an operating cash reserve of one month of operating cash.
13. After the first twelve months of operation, maintenance of an operating cash reserve equal to the cash required in the 45 day period of maximum cash requirements.
14. Any funds that the City has had to advance from City funds to operate and maintain the RWDS because there were not sufficient funds available in the RWDS Operating Fund, plus interest on the amount at a rate equal to the interest rate that the City actually earned on City funds invested during the period of the advance.
15. The City has agreed to pay all costs for Additional Pumps for the "CAP" pump station. It is acknowledged that the City has done this to compensate for the City's intended use of the RWDS to transport water for recharge for the City's purposes. At such time that the RWDS has sufficient effluent available to meet all RWDS irrigation requirements, throughout the year, the City will also pay for the total operation and maintenance costs associated with the "CAP" pump station, so long as no water for RWDS purposes is being pumped through the "CAP" pump station. Notwithstanding the above, the City shall at all times pay for direct energy costs associated with the transportation of water being transmitted for recharge purposes through the RWDS.

EXHIBIT B-2

NON-POTABLE WATER RATES

EXAMPLE CALCULATIONS OF WATER RATES TO BE CHARGED FOR WATER DELIVERED THROUGH RECLAIMED WATER DISTRIBUTION SYSTEM

GENERAL NOTE: ANY AND ALL COSTS TO OWN AND OPERATE THIS SYSTEM SHALL BE BORN BY PARTIES TO WHICH WATER IS DELIVERED. THESE COSTS SHALL INCLUDE, BUT NOT BE LIMITED TO POWER, WATER, LABOR, EQUIPMENT, MATERIALS, OPERATION, REPAIR, NEW CONSTRUCTION, REPLACEMENT, OVERHEADS, LOAN AMORTIZATION, ETC.

DESCRIPTION	ACRE FEET OF WATER PER YEAR	COST IN DOLLARS PER ACRE FOOT	COST IN DOLLARS PER YEAR
RAW CAP WATER	2,000	55	110,000
OTHER WATER	50	80	4,000
COSTS TO PERMIT SECONDARY EFFLUENT TO BE USED, INCLUDING BUT NOT LIMITED TO FILTRATION, DISINFECTION, ETC.	1,500	30	45,000
TOTAL	3,550		159,000
<u>PUMPING ELECTRICITY</u>			
LIFT STATION .. FROM CAP CANAL TO RESERVOIR	2,050	20	41,000
PUMP STATION "A" FROM RESERVOIR TO ZONE 2	2,686	35	94,010
PUMP STATION "B" FROM ZONE 2 TO ZONE 3	2,000	36	72,000
PUMP STATION "C" FROM ZONE 3 TO ZONE 4	1,500	35	52,500
PUMP STATION "D" FROM ZONE 4 TO ZONE 5	1,000	36	36,000
TOTAL ELECTRICITY			295,510
OPERATION & MAINTENANCE OF SYSTEM			100,000
TOTAL DIRECT COSTS			554,510
WATER RESOURCES DEPARTMENT OVERHEAD DISTRIBUTION			55,451
ESTABLISH AND MAINTAIN OPERATING CASH RESERVE			5,000
Interest required to provide operating cash			5,000
GENERAL FUND OVERHEAD DISTRIBUTION			83,177
IN-LIEU PROPERTY TAX			5,545
FRANCHISE FEE			27,726
REPLACEMENT/CONSTRUCTION FUND			4,000
AMORTIZATION OF REPLACEMENT/CONSTRUCTION LOANS			10,000
TOTAL COST			750,409
LESS POWER COSTS OF PUMP STATIONS A,B,C, & D			254,510
TOTAL COST WITHOUT POWER COSTS OF PUMP STATIONS A,B,C, & D			495,899
BASE CHARGE, IN DOLLARS PER ACRE FOOT, IS TOTAL COST WITHOUT POWER COSTS OF PUMP STATIONS A,B,C, & D DIVIDED BY TOTAL ACRE FEET OF WATER DELIVERED	3,550	140	
ADDITIONAL CHARGE TO BE ADDED TO BASE CHARGE, IN DOLLARS PER ACRE FOOT, FOR CUSTOMERS SERVED THROUGH PUMP STATIONS:			
ELECTRICITY COSTS FOR PUMP STATION "A"		35	
ELECTRICITY COSTS FOR PUMP STATION "B"		36	
ELECTRICITY COSTS FOR PUMP STATION "C"		35	
ELECTRICITY COSTS FOR PUMP STATION "D"		36	
RATES, IN DOLLARS PER ACRE FOOT, IS BASE CHARGE PLUS THE SUM TOTAL OF THE COST OF ELECTRICITY OF ALL PUMP STATIONS WATER HAS GONE THROUGH TO BE DELIVERED:			
ZONE 1..BASE CHARGE ONLY...GRAVITY SERVICE FROM RESERVOIR			140
ZONE 2..BASE CHARGE PLUS ELECTRICITY FOR PUMP STATION "A"			175
ZONE 3..BASE CHARGE PLUS ELECTRICITY FOR PUMP STATIONS "A" & "B"			211
ZONE 4..BASE CHARGE PLUS ELECTRICITY FOR PUMP STATIONS "A" & "B" & "C"			246
ZONE 5..BASE CHARGE PLUS ELECTRICITY FOR PUMP STATIONS "A" & "B" & "C" & "D"			282

EXHIBIT C

This exhibit is prepared for the purpose of determining the RWDS contribution as stated in City of Scottsdale Agreement No. 900083.

I. Calculation of RWDS Costs:

a. Central Arizona Project/Turnout Structure(1)	\$ 45,670
b. Landscape Contract(2)	91,626
c. Telemetry System fees(3)	25,000
d. Design and Administration fees(1)	1,374,392
e. Construction Management fees (Greiner Engr.)(2)	618,200
f. Construction Consulting fees (NBS/Lowry Engr.)(2)	241,900
g. City of Scottsdale Plan Review fees(1)	9,765
h. Mollusks screens and chlorination costs(4)	692,000
i. Right of Way Acquisitions	44,875
j. Pipeline and Pump Station Costs	9,696,225
k. City Payback Admin Fees	10,000
l. Minus line valves at Pump Station A= \$ (16,000)	(16,000)
m. City Plan & Specs Repro Costs, Out Legal Fees	10,000
n. TOTAL RWDS COSTS	\$ 12,843,653

II. Calculations of RWDS Contingency Costs:

1. Landscape Construction Costs(line b.)	\$ 91,626
2. Pipe, Pump Sta's, Mollusks & Chlor Costs(line h+j+k)	10,372,225
TOTAL CONSTRUCTION COSTS	\$ 10,463,851
10 % OF TOTAL CONSTRUCTION COSTS(CONTNGENCY)	1,046,385
TOTAL COST OF CONSTRUCTION PLUS CONTINGENCY	\$ 11,510,236

III. Calculation of RWDS Contribution:

Divide (TOTAL RWDS COSTS \$ 12,843,653 PLUS	
TEN PERCENT CONTINGENCY \$ 1,046,385) BY	
20[MGD Pipeline Capacity]	
(\$ 13,890,038)/20=RWDS Contribution per 1 MGD	\$ 694,502
0.5 MGD =	347,251
LESS: Credit for amounts previously paid for design, engineering and construction costs	\$ (124,577)
TOTAL CONTRIBUTION DUE PURSUANT TO SECTION NO. 3 OF THIS AGREEMENT	\$ 222,674

NOTES:

- (1) Based on actual costs incurred
- (2) Based on bid amount of approved contract
- (3) Based on bid amount plus \$15,000 for City staff work
- (4) Based on estimates supplied by NBS/Lowry

EXHIBIT D

M E M O

TO: Scottsdale Planning Department

FROM: Scottsdale Water Resources Department

RE: Satisfaction of Zoning Stipulations

DATE:

This memorandum is to certify that Boulders Joint Venture has satisfied zoning stipulation 15b. and Use Permit Stipulations 6 and 7 of Cases 42-Z-89/38-UP-89, attached hereto, by execution and implementation of a Pipeline Capacity Agreement in connection with the City's Reclaimed Water Distribution System.

- a. The applicant shall provide an approved Master Water Plan for the subject property including any required off-site WATER lines, booster and storage facilities. Said Master Plan shall be prepared in accordance with the design procedures and criteria of the City of Scottsdale by a registered professional engineer licensed in the State of Arizona. The Master Water Plan shall include, but not ~~necessarily be limited to~~, the following:
- 1) Location and size of all water system components.
 - 2) Indication of the timing and responsible party for the construction of the water system.
 - 3) A flow and pressure analysis which includes simulation using a computer model with a peak and fire-flow requirements.
 - 4) Integration of Master Water Plan with the City's CURRENT Master Water SUPPLY DISTRIBUTION WATER Plan.
- b. Applicant shall construct a wastewater reclamation plant ON SITE AND/OR PARTICIPATE IN CONSTRUCTION OF THE MASTER PLANNED REGIONAL WASTEWATER TREATMENT AND RECLAIMED WATER DISTRIBUTION SYSTEM PURSUANT TO AN AGREEMENT WITH THE CITY, COMMUNITY FACILITIES DISTRICT, OR OTHER CONSTRUCTING FINANCING/METHOD PROVIDING FOR CONSTRUCTION OF SUCH SYSTEM. ~~and deed it and the necessary land for the siting of the plant to the City of Scottsdale for operation and maintenance. Prior to the issuance of a permit to construct the plant, an agreement shall be entered into between the City and applicant providing for the construction and subsequent deeding of the plant and site to City, together with the details of maintenance and operation of the plant.~~
- c. The applicant shall provide an approved Master Wastewater Plan for the subject property. Said master plan shall be prepared by a registered, professional engineer in the State of Arizona. The applicant's master wastewater plan shall include, but not be limited to the following:
- 1) Location and size of all necessary wastewater/sewer facilities and the land areas for the facilities.
 - 2) A timetable specifying the time and responsible party for construction of the necessary wastewater facilities.
 - 3) Necessary calculations to substantiate line sizes.
 - 4) Integration of the Master Wastewater Plan with the City's ~~north Scottsdale~~ CURRENT Wastewater COLLECTION - WATER RECLAMATION Master Plan.

APPROVED

7/3/90 DH
DATE INITIALS

MISCELLANEOUS

1. At the time of building permits, a park development fee may be required. The fee would be a proportionate share of the cost for land acquisition and improvements for a park to serve that portion of the community.
2. The responsibility for the maintenance of landscape buffers on public and private property (back-of-curb to right-of-way or access easement line included) and drainageways shall be by the applicant and subsequent homeowners associations, and provisions, therefore, shall be set forth in a separate agreement between the applicant and the City which shall be recorded in the records of the Maricopa County Recorder.
3. Those areas of designated common area shall not be accepted for maintenance or ownership by the City without expressed action of the City Council. Before any improvement is accepted, it shall meet City standards. Failure to maintain the designated common areas could result in a civil action brought by the City for costs incurred by the City for said maintenance.
4. All improvements associated with a development or phase of a development and/or required for access or service to the development or phase of a development shall be constructed in full by the applicant including but not limited to washes, storm drains, drainage structures, water systems, sewer system, curbs and gutters, paving sidewalks, streetlights, street signs and landscaping. Assurance of construction satisfactory to the City shall be posted with the City guaranteeing the installation of the improvements.

USE PERMITS

1. Development shall be in substantial conformance with the plan submitted with this application, except where modified by the stipulations.
2. These stipulations shall apply in addition to the stipulations for the Boulders (as amended by 112-Z-86 AND 42-Z-89).
- ~~3. Approval of this use permit grants conceptual approval of the golf course configuration as reflected in "Phase 1" only. Development of "Phase 2", or any other change which is determined by the Project Review Director to be a significant enlargement or alteration of the approved plan shall require an amendment to this use permit.~~
3. Development Review of any future construction, or improvement OR MODIFICATION WHICH CHANGES THE LOCATION OR AMOUNT OF TURF, DRAINAGE CHARACTERISTICS, OR IRRIGATION LAYOUT to the EXISTING golf course shall be required.
- ~~Approval of an amendment to this use permit for the golf course shall be obtained prior to application for Development Review on the additional nine holes or any significant change to the existing golf course as determined by the Project Review Director. The amended use permit application shall include a detailed study showing the peak day and average day water demand. The location of any clubhouse facilities and the need for public access shall be determined at the time of use permit approval. The golf course site plan and the exterior design of the clubhouse, maintenance facilities, and other related facilities (including the proposed parking lot) shall be subject to Development Review Board approval. Such design shall include the color and physical character of the facilities.~~

APPROVED

DATE 2/2/90

INITIALS DH

5. Development Review approval shall not be given on parcels adjacent to the expanded golf course south of Westland Drive (Parcels R, S, T, P, Q, A/B, H4, Q, R, P, T) until the ~~use permit (17 UP 36) amendment for the Phase 2 golf course is approved or the applicant waives the opportunity to expand develop the golf course in writing to the Project Review Director~~ DEVELOPMENT REVIEW BOARD HAS APPROVED THE APPLICABLE GOLF COURSE SITE PLAN. If the additional golf course is not developed, the land area designated for golf course use shall be incorporated into the adjacent parcels with no increase in the number of allowed units.
6. Unless resolved otherwise, the City staff shall submit an application to the Director of the Arizona Department of Water Resources for a modification of the applicable maximum gallons per capita per day (GPCPD) goal of the City of Scottsdale for all non-residential water use, including resorts and golf courses. In the event that the Director of the Department of Water Resources does not approve the requested adjustment, permits shall not be issued for any non-residential uses, unless an alternate solution is approved IN AN AGREEMENT WITH THE APPLICANT by the City Council.
7. Prior to the issuance of grading, grubbing, clearing, or construction permits for development of Phase 2 of the golf course, IF NOT PARTICIPATING IN THE MASTER PLANNED REGIONAL WASTEWATER TREATMENT - RECLAIMED WATER DISTRIBUTION SYSTEMS the applicant shall:
 - a. Provide a study acceptable to the city which identifies the peak-day and average-day golf course water requirements for the additional nine holes and the service area necessary to generate sufficient effluent to meet this water demand.
 - b. Provide the detailed design for a wastewater treatment plant which will produce sufficient effluent to meet the peak day golf course requirements and would be capable of expansion to meet the ultimate need for wastewater treatment within the service area.
 - c. Provide all the land necessary for the wastewater treatment facility.
 - d. COMMIT BY AGREEMENT WITH THE CITY TO construct a facilities which is ARE capable of producing sufficient treated effluent to meet the peak-day golf course water requirement for the additional nine holes and meet all state, county and city standards.
 - e. Provide an alternate source of water to meet the golf course water requirements in the event sufficient effluent is not available to irrigate the additional nine holes of golf when they are constructed.
 - f. Provide a master plan and construction of facilities, including pipes and pump stations, to distribute the alternate source of water should it be required as set forth in 7E above.
 - g. Provide a contract acceptable to the City of Scottsdale with the Boulders Carefree Sewer Corp. assuring the City that the original and continuing right to use effluent to supply the water requirements for this Phase 2 golf course will be provided.

APPROVED

7/3/90
DH
INITIALS



EXHIBIT E

June 12, 1991

Mr. Harold A. Jenkins, Project Manager
Boulders Project Office
P.O. Box 5293
Carefree, AZ 85377

RE: LETTER OF UNDERSTANDING FOR BOULDERS DEVELOPMENT SEVEN-HOLE
GOLF COURSE EXPANSION

Dear Mr. Jenkins:

The following constitutes a letter of understanding between the Boulders Development ("Boulders") and the City of Scottsdale ("City") for provision of an irrigation supply to the Boulders' seven-hole golf course expansion (the "expansion") within the City's water service area.

General Understanding

It is hereby understood between the Boulders and the City that the Boulders' existing 29-hole golf course will continue to receive its irrigation water supply through a pre-existing contract with the Carefree Water Company under a current 715.45 acre foot per year allocation determined by the Arizona Department of Water Resources. Further, it is understood that the City's provision of water service is restricted to only the Boulders' Phase 2 seven-hole expansion located within the City's water service area, subject to the Boulders' payment of the City's water resources development fee and concurrence with the specific terms, conditions and understanding prescribed in this letter.

Sources of Supply

You have advised the City that (30) acre feet of water provided by the City of Scottsdale, when combined with other supplies currently available to the Boulders, including but not limited to reuse of wastewater generated and treated on the Boulders development, will meet the ultimate annual demand of the expansion.

Payment of Water Resources Development Fee, Water Quantity and Delivery

Based upon payment by the Boulders of a one-time water resources development fee ("fee") in the amount of \$60,000 (30 acre feet at \$2,000 per acre foot); the City will provide up to 30 acre feet of water each calendar year as requested to irrigate the expansion unless additional allocation is purchased. It is understood that payment of the fee, which shall be payable one day prior to requesting water service, entitles the Boulders to 30 acre feet of water per calendar year delivered by the City through the City's potable distribution system, at a delivery rate not to exceed 250 gallons per minute. It is further understood that during the first growing season only (calendar year 1991), additional "grow in" water presently estimated to be approximately 28 acre feet on the basis of one acre foot per acre of new turf, may be used for the establishment of the turf as permitted by the Department of Water Resources, without payment of any additional fee to the City.

The Boulders' right to receive water shall be the same as that of other City water customers and shall be subject to all present and future ordinances and policies of the City. Payment of the fee does not entitle the Boulders to water without charge. The Boulders, therefore, shall pay for the water delivered at the applicable City rate and as billed by the City.

Termination of Service

It is understood that once 30 acre feet of water has been delivered by the City in any calendar year, the meter to this service will be shut off and no further water will be supplied by the City until January 1st of the following calendar year, except 1991 this amount will be 58 acre feet.

Reporting and Compliance Requirements

The City will record and report actual annual usage of this City-provided supply to the Arizona Department of Water Resources (Department) for each calendar year. Annual reporting requirements and compliance with the Department's annual allocation, however, are the sole responsibility of the Boulders.

RESOLUTION NO. 3553

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO AGREEMENT NOS. 920002, 920003, 920004, 920005 AND 920006 RESERVING CAPACITY IN THE RECLAIMED WATER DISTRIBUTION SYSTEM PIPELINE FOR CERTAIN GOLF COURSES.

WHEREAS, on February 12, 1991, the City Council authorized the construction of a Reclaimed Water Distribution System ("RWDS") to transport raw CAP water and reclaimed wastewater from a water reclamation plant to golf courses in the north area of the City for irrigation of the golf courses; and

WHEREAS, Pipeline Capacity Agreements are being used to enable the north area golf courses owners to participate financially in the design and construction of the RWDS and to enable them to reserve capacity in the system; and

WHEREAS, the City has reached agreement on the terms of the future delivery of reclaimed wastewater and raw CAP water in Pipeline Capacity Agreements with Highlands Development Co., Troon North Golf Company, Boulders Joint Venture, DC Livestock Company Limited Partnership, and Amberjack, Ltd. and State Farm Mutual Automobile Insurance Company Co.; and

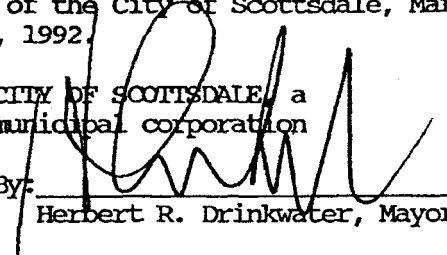
WHEREAS, it is in the interest of the citizens of the City of Scottsdale that the north area golf courses use excess raw CAP water and reclaimed wastewater to irrigate golf courses instead of groundwater.

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1: Herbert R. Drinkwater, Mayor, is hereby authorized to and directed to execute on behalf of the City of Scottsdale Agreement Nos. 920002, 920003, 920004, 920005 and 920006 providing for Pipeline Capacity Agreements with landowners reserving capacity in the Reclaimed Water Distribution System.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 3rd day of February, 1992.

CITY OF SCOTTSDALE, a
municipal corporation

By: 
Herbert R. Drinkwater, Mayor

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:


for Richard W. Garnett, III, City Attorney

FIRST AMENDMENT TO PIPELINE CAPACITY AGREEMENT NO. 920004

This *First Amendment to Pipeline Capacity Agreement No. 920004* ("the First Amendment") is made this 19th day of December, 1994, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and Boulders Joint Venture, a joint venture formed under the Arizona Uniform Partnership Act ("Owner").

R E C I T A L S

A. On February 3, 1992, City and Owner entered into *Pipeline Capacity Agreement No. 920004* ("the Agreement") under which Owner purchased five hundred thousand (500,000) gallons per day of transmission capacity in the RWDS in consideration for Owner's payment of the sum of Thirty Four Thousand Two Hundred Fifty One Dollars (\$347,251). At the same time, Owner also paid City of sum of Sixty Thousand Dollars (\$60,000) as a one-time water resources development fee for delivery of up to thirty (30) acre-feet of water annually from the RWDS for turf irrigation with respect to Owner's golf course. However, the annual water demand of Owner's golf course exceeds nine hundred (900) acre-feet per year. At the present time, the bulk of the water used for turf irrigation by Owner consists of groundwater withdrawn from wells located within the "Cave Creek-Carefree Sub-Basin," including wells located within City. Owner desires to acquire additional capacity in the RWDS in order to enable Owner to irrigate more of its golf course with reclaimed water as it is available, or surface water.

B. City has previously entered into Agreement No. 930028 ("the Payson Agreement") in connection with which City has agreed to accept the assignment of eight hundred four (804) acre-feet of Payson CAP subcontract water in lieu of the payment of water resources development fees by Owner. Pursuant to the terms of the Payson Agreement, City has granted Owner a credit to the extent of seven hundred seventy four (774) acre-feet of water, and has refunded Owner the sum of Sixty Thousand Dollars (\$60,000), which amount was paid to City by Owner in connection with entering into Agreement No. 920004, as described in the preceding paragraph.

C. City and Owner now wish to amend certain provisions of the Agreement as stated herein.

A G R E E M E N T

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Capitalized Terms. All capitalized terms not otherwise defined in the First Amendment shall have the meanings ascribed to them in the Agreement.

2. Amendment. The parties hereby amend the Agreement as follows:

A. Section 3, page 4. Delete Section 3 and insert the following:

3. PAYMENTS BY OWNER FOR RIGHTS UNDER THIS AGREEMENT

At the time of the execution of the Agreement, Owner paid to City Three Hundred Forty Seven Thousand Two Hundred Fifty One Dollars (\$347,251) as adjusted, as shown on Exhibit "C" attached hereto, for five hundred thousand (500,000) gallons per day of transportation capacity in the RWDS. This dollar amount was calculated pursuant to Exhibit "C" attached hereto. Concurrently with the execution of the First Amendment, Owner shall pay to City, in cash (by wire transfer) or cashier's check, Six Hundred Sixty Thousand One Hundred Eighty Eight Dollars and Twenty Five Cents (\$660,188.25) as calculated pursuant to Exhibit "C-1" attached hereto, for seven hundred fifty thousand (750,000) gallons per day of transportation capacity in the RWDS. Upon payment of this additional sum to City, and execution of the First Amendment by both parties, Owner shall have the right to receive a total of one million two hundred fifty thousand (1,250,000) gallons per day of transportation capacity in the RWDS ("Owner's RWDS Capacity").

B. Section 4.3, page 5. Section 4.3 is amended to read as follows:

4.3 Backup Potable Supply

As a condition of City delivering water through the RWDS to the Property for irrigation of turf, Owner shall i) pay, or have previously paid, to City a water resources development fee for an amount of water at least equal to the Arizona Department of Water Resources (ADWR) maximum annual potable water allotment for the intended turf use or, if such allotment does not exist, the expected annual demand for water to serve the uses permitted under Section 10 hereof, considering all applicable conservation requirements (the "annual allotment") (or if City has no such fee, a payment of Two Thousand Dollars (\$2,000) per acre-foot of annual allotment increased annually by the Engineering News Record Construction Cost Index for Los Angeles or comparable index if this no longer exists); or, alternatively, ii) transfer to City the right to receive CAP water, in

an amount equal to the annual allotment; or iii) a combination of i) and ii) equal to the annual allotment. In addition, Owner shall pay any water development fees, meter fees and any other fees required by City ordinances and codes at the time the fee payments are made, together with the installation of a connection to City's potable system. Owner shall be responsible for all improvements to the water system to provide backup potable supply, which may include pumping stations, reservoirs, pipelines, and related appurtenances. Payment of the fees and/or transfer of CAP water may occur at any time prior to receiving any Non-Potable Water from the RWDS. City will not deliver Non-Potable Water to the Property until the requirements of this Section have been met. The combined total of potable and Non-Potable Water delivered by City to the Property for the purposes permitted under this Agreement in any calendar year shall not exceed the amount of water for which the requirements of this Section have been met, adjusted upward based on ADWR allowances for use of effluent. If Owner is entitled to use potable City water because the turf-related use was in existence and received potable water prior to the effective date of City's water resource development fee ordinance, then the fee payment and CAP water transfer requirements in this Section shall not apply and the turf-related use shall be considered to be "grandfathered." To the extent the requirements of this Section are met either by payment, transfer of CAP water or grandfathering, City shall have the same duty to deliver potable water to Owner as it has to deliver potable water to other users for comparable purposes. In particular, City shall deliver potable water to the Property for the purposes permitted hereunder in an amount equal to the difference between Owner's demand for Non-Potable Water (to the extent the requirements of this Section have been met) and the amount of Non-Potable Water delivered by City pursuant to Section 4.1. City may reduce the amount of potable water to be delivered under this Section only if City in the reasonable exercise of its discretion determines that public health, safety and welfare require it to reduce deliveries of potable water on a uniform basis to all non-essential industrial users of water throughout the city.

- C. Section 8, page 8. Delete paragraph 8 and insert the following:

8. PRIVATE WATER COMPANIES

The parties acknowledge and agree that ten (10) of the thirty six (36) golf holes on the Property are located within the Town of Carefree and that Owner currently receives water service to the Property from Carefree Water Company, which is a private water company. Owner agrees that such private water company shall not serve water to the golf courses located on the Property during the term of this Agreement except to the extent that City is unable to deliver to the Property Non-Potable Water through the RWDS or potable water through its municipal water system in an amount equal to Owner's RWDS capacity. The foregoing notwithstanding, Owner shall be permitted to receive water from such private water company for use on the golf courses located on the Property for a period of one year from the effective date of this Agreement to the extent necessary to satisfy its turf irrigation requirements, pending Owner's completion of its on-site transmission and distribution system for Non-Potable Water. Nothing contained herein shall be deemed to authorize Owner to exceed any applicable restrictions or limitations imposed by ADWR on the amount of water which may be used for turf-related watering purposes on the Property, as provided in Section 7, above.

Owner covenants and agrees to indemnify, hold harmless and defend City, together with its officials, officers, employees and agents, from and against any and all claims, actions or proceedings initiated or asserted by Carefree Water Company or the Arizona Corporation Commission arising out of or related to City's service of water to the golf courses located on the Property. Without limiting the foregoing, the duty to indemnify specifically includes claims or actions involving such private water company's assertion that water service by City infringes on the water company's rights under its certificate of convenience and necessity. If any such claim or action is brought or asserted against City, or its officials, officers, employees or agents, for which indemnity may be sought from Owner, then City or any such person shall promptly notify Owner in writing. Owner shall have the option within ten (10) days of receiving such notice of electing to assume the defense thereof, including employment of legal counsel of Owner's choice and the payment of all fees and expenses, which shall be paid as

incurred. If Owner does not elect to assume the defense, Owner shall pay all reasonable fees and expenses incurred by City or its officials, officers, employees and agents in the defense of such action or claim. City shall have the right to employ additional counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of City unless i) the employment thereof has been specifically authorized by Owner in writing; or ii) Owner has failed to assume the defense of the action or claim as hereinabove provided.

D. Section 12, page 9. Section 12 is amended to read as follows:

12. CONSTRUCTION OF MAIN LINE

Owner shall not be entitled to receive Non-Potable Water through the RWDS until it constructs a Main Line, including a meter of sufficient size to deliver Non-Potable Water to the water distribution system of Owner at the Property in an amount at least equal to Owner's RWDS Capacity at the time of commencement of construction of the Main Line. With regard to the inclusion of a meter in the construction of a Main Line, Owner shall only be obligated to pay the costs and expenses incident to the purchase and installation of the meter; Owner shall have no obligation to pay to City any fees, including development fees, in connection with such meter. A Main Line shall have an air gap between the golf course lake and the Main Line that provides backflow prevention under all flow conditions. Prior to construction, plans and specifications for the Main Line shall be submitted to City for approval, which approval shall not be unreasonably withheld. After construction, Owner shall convey to City the Main Line and any easements, rights of way and/or fee property equal to ten feet on either side of the center line along the alignment of the Main Line contained in the approved plans and specifications or have paid the cost of condemning such easements, rights of way and/or fee property pursuant to Section 13 hereof. City will accept the Main Line and related property interests pursuant to City's usual and customary acceptance procedure. The Main Line and related property interests shall then be a part of the RWDS. Owner is not required to pay costs in connection with oversizing the Main Line.

E. Section 14, page 10. Delete Section 14 and insert the following:

14. ZONING STIPULATIONS

14.1 Owner's Guaranteed Backup Potable Water Supply

At the time Owner entered into the Agreement, Owner paid City the sum of Sixty Thousand Dollars (\$60,000) as a one-time water resources development fee for delivery for up to thirty (30) acre-feet of water annually for turf irrigation with respect to a portion of Owner's golf course. Thereafter, pursuant to the terms of the Payson Agreement, under which City was transferred the right to receive CAP water in May 1994, City granted Owner credit for an additional seven hundred seventy four (774) acre-feet of water. Owner has, thus, as of the date of this First Amendment, satisfied the requirements set forth in Section 14.3 for eight hundred four (804) acre-feet of annual water demand of Owner's golf course. Owner's remaining annual demand is satisfied currently by the delivery of effluent purchased from the Boulders Carefree Sewer Corporation.

14.2 Satisfaction of Zoning Stipulations

Execution and implementation of this Agreement by Owner and City shall be deemed to constitute satisfaction of Zoning Stipulation 15(b), and Use Permit Stipulations 6 and 7 of Cases 42-Z-89/38-UP-89. City's Water Resources Department shall confirm that Owner has satisfied the above-referenced stipulations by placing the memo attached hereto as Exhibit "D" in the above-referenced zoning file.

F. Section 17.1, page 15. Section 17.1 is amended to delete the address for Owner and insert the following addresses for notice to Owner:

Boulders Joint Venture
34631 N. Tom Darlington Dr.
P. O. Box 2090
Carefree, AZ 85377
Attention: Club Manager

With a copy to:

Norman D. James, Esq.
Riley, Carlock & Applewhite
101 N. First Ave., Suite 2700
Phoenix, AZ 85003-1973

G. New Exhibits. Delete Exhibit "A" and insert the new Exhibit "A" attached to the First Amendment in its stead. Insert Exhibit "C-1" attached to this Amendment after Exhibit "C" as a new exhibit to the Agreement.

3. Limited Effect. Except as specifically amended hereby, all terms, provisions, covenants, and agreements contained in the Agreement shall remain in full force and effect following the date hereof.

4. Miscellaneous Provisions.

A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any party to this Agreement of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

B. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

C. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

D. Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

E. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

F. Term. Unless terminated pursuant to this Agreement, this Agreement shall continue in full force and effect in perpetuity.

G. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between City and Owner or other purchasers of RWDS capacity. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

I. Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto.

J. Good Standing; Authority. Each of the parties represents and warrants to the other i) that it is duly formed, validly existing and in good standing under all applicable laws; and ii) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

K. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses City or Owner from undertaking any contractual commitment to perform any act hereunder, this Agreement shall be deemed to permit City or Owner to take such action at its discretion.

L. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona including, without limitation, the provisions of A.R.S. § 38-511.

M. Time of Essence. Time is of the essence of this Agreement.

N. Attorneys' Fees. If any action is brought by any party to this Agreement with respect to its rights under this Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees and court costs from the other party or parties as determined by the court.

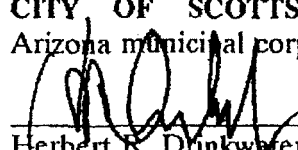
O. Binding Effect. Subject to the terms and conditions of Section 16, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed the First Amendment as of the day and year first written above on behalf of City and Owner.

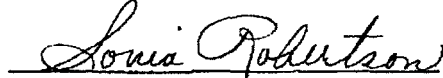
"City"

CITY OF SCOTTSDALE, an
Arizona municipal corporation

By:


Herbert R. Drinkwater, Mayor

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:


for Fredda J. Bisman, City Attorney

"Owner"

BOULDERS JOINT VENTURE, a
joint venture formed under the
Arizona Uniform Partnership Act

By:

Its:


General Partner

Address:

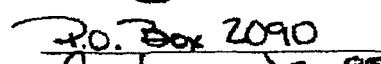
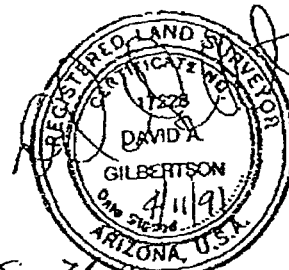

P.O. Box 2090
Coeur d'Alene, ID, 83317

EXHIBIT "A"



PROPERTY DESCRIPTION
GPLF COURSE HOLES 1 AND 4
AT THE BOULDERS

That part of the Southwest quarter of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the West quarter corner of said Section 2 as shown on the plat for BOULDERS CAREFREE PARCEL "E", according to Book 343 of Maps, Page 18, records of Maricopa County;

thence South 89 degrees 02 minutes 09 seconds East along the North line of said Southwest quarter a distance of 950.68 feet to a boundary corner of said Parcel "E", said point being the TRUE POINT OF BEGINNING;

thence continuing South 89 degrees 02 minutes 09 seconds East along said North line a distance of 167.94 feet;

thence South 39 degrees 43 minutes 45 seconds East along the boundary of said Parcel "E" a distance of 329.48 feet to a point herein described as point "A";

thence South 74 degrees 11 minutes 43 seconds West continuing along said boundary a distance of 110.52 feet to the beginning of a curve concave southeasterly and having a radius of 300.00 feet;

thence southwesterly along said boundary and the arc of said curve through a central angle of 19 degrees 29 minutes 28 seconds a distance of 102.06 feet;

thence North 28 degrees 40 minutes 19 seconds continuing along said boundary a distance of 376.27 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 59,084 square feet or 1.3564 acres more or less.

Together with the following described parcel:

BEGINNING at said Point "A" in the above described parcel;

thence South 39 degrees 43 minutes 45 seconds East 43.76 feet to a boundary corner of said Parcel "E" and the TRUE POINT OF BEGINNING, the following courses follow said boundary of Parcel "E" until otherwise noted;

thence continuing South 39 degrees 43 minutes 45 seconds East 436.89 feet;

thence South 31 degrees 30 minutes 59 seconds East 104.19 feet;

thence South 28 degrees 57 minutes 15 seconds East 38.86 feet;

thence South 16 degrees 41 minutes 44 seconds East 77.45 feet;

thence South 36 degrees 53 minutes 27 seconds East 110.07 feet to the beginning of a curve concave southwesterly and having a radius of 130.00 feet;

thence southeasterly along the arc of said curve through a central angle of 17 degrees 39 minutes 32 seconds a distance of 40.07 feet to a point of tangency;

thence South 19 degrees 13 minutes 55 seconds East 112.00 feet to the beginning of a curve concave westerly and having a radius

of 80.00 feet;
thence southerly along the arc of said curve through a central angle of 55 degrees 16 minutes 58 seconds a distance of 77.19 feet;
thence South 25 degrees 38 minutes 57 seconds East 25.00 feet;
thence South 78 degrees 09 minutes 27 seconds East 36.19 feet;
thence North 83 degrees 20 minutes 10 seconds East 82.27 feet;
thence South 04 degrees 41 minutes 15 seconds East leaving said boundary of Parcel "E" a distance of 205.64 feet to a point on the northerly right-of-way line of Clubhouse Drive as described in Instrument number 85-584550, records of Maricopa County;
thence South 85 degrees 35 minutes 38 seconds West along said right-of-way 161.13 feet to the beginning of a curve concave northeasterly and having a radius of 182.00 feet;
thence westerly along said right-of-way and the arc of said curve through a central angle of 25 degrees 24 minutes 22 seconds a distance of 80.70 feet to a point of tangency;
thence North 69 degrees 00 minutes 00 seconds West along said right-of-way 34.92 feet to the beginning of a curve concave southwesterly and having a radius of 217.63 feet;
thence northwesterly along said right-of-way and the arc of said curve through a central angle of 21 degrees 00 minutes 00 seconds a distance of 79.77 feet to a point of tangency;
thence West along said right-of-way 129.59 feet;
thence North leaving said right-of-way 7.00 feet to the beginning of a curve, the radius of which bears South a distance of 1025.00 feet therefrom;
thence westerly along the arc of said curve through a central angle of 05 degrees 51 minutes 38 seconds a distance of 104.84 feet to a point of tangency;
thence South 84 degrees 08 minutes 22 seconds West 45.02 feet to the beginning of a curve concave northeasterly and having a radius of 155.00 feet;
thence northwesterly along the arc of said curve through a central angle of 31 degrees 02 minutes 53 seconds a distance of 83.99 feet to a point of tangency;
thence North 64 degrees 48 minutes 45 seconds West 6.09 feet to the beginning of a curve concave southwesterly and having a radius of 205.00 feet;
thence northwesterly along the arc of said curve through a central angle of 30 degrees 45 minutes 12 seconds a distance of 110.03 feet to a point of tangency;
thence South 84 degrees 26 minutes 03 seconds West 41.85 feet to the beginning of a curve concave northeasterly and having a radius of 155.00 feet;
thence northwesterly along the arc of said curve through a central angle of 50 degrees 15 minutes 17 seconds a distance of 135.95 feet to a point of tangency;
thence North 45 degrees 18 minutes 40 seconds West 272.28 feet to the beginning of a curve concave southwesterly and having a radius of 275.00 feet;
thence northwesterly along the arc of said curve through a central angle of 30 degrees 30 minutes 30 seconds a distance of 146.43

feet to a point of tangency;
 thence North 75 degrees 49 minutes 11 seconds West 71.88 feet to
 the beginning of a curve concave northeasterly and having a
 radius of 209.21 feet;
 thence northwesterly along the arc of said curve through a central
 angle of 30 degrees 55 minutes 48 seconds a distance of 112.94
 feet to the beginning of a reverse curve concave southwesterly
 and having a radius of 350.00 feet;
 thence northwesterly along the arc of said curve through a central
 angle of 13 degrees 10 minutes 48 seconds a distance of 80.51
 feet to the beginning of a reverse curve concave northeasterly
 and having a radius of 12.00 feet;
 thence northwesterly along the arc of said curve through a central
 angle of 75 degrees 30 minutes 41 seconds a distance of 15.82
 feet to a point of tangency;
 thence North 17 degrees 26 minutes 31 seconds East 40.64 feet to
 the beginning of a curve concave southeasterly and having a
 radius of 175.00 feet;
 thence northeasterly along the arc of said curve through a central
 angle of 30 degrees 35 minutes 51 seconds a distance of 93.45
 feet to a point of tangency;
 thence North 48 degrees 02 minutes 21 seconds East 63.42 feet to
 the beginning of a curve concave northwesterly and having a
 radius of 275.00 feet;
 thence northeasterly along the arc of said curve through a central
 angle of 13 degrees 17 minutes 48 seconds a distance of 63.82
 feet to a point on said boundary of Parcel "E", the following
 courses follow said boundary to the end of this description;
 thence South 48 degrees 17 minutes 07 seconds East leaving said
 curve a distance of 111.00 feet;
 thence South 77 degrees 33 minutes 43 seconds East 153.34 feet;
 thence South 50 degrees 11 minutes 59 seconds East 215.18 feet;
 thence South 55 degrees 04 minutes 43 seconds East 211.86 feet;
 thence South 79 degrees 26 minutes 53 seconds East 393.82 feet;
 thence North 32 degrees 44 minutes 15 seconds West 319.86 feet;
 thence North 20 degrees 13 minutes 18 seconds West 93.87 feet;
 thence North 28 degrees 40 minutes 19 seconds West 412.58 feet to
 a point on a curve, the radius of which bears South 36 degrees
 19 minutes 14 seconds East a distance of 260.00 feet
 therefrom;
 thence northeasterly along the arc of said curve through a central
 angle of 20 degrees 30 minutes 57 seconds a distance of 93.10
 feet to a point of tangency;
 thence North 74 degrees 11 minutes 43 seconds East 128.27 feet to
 the TRUE POINT OF BEGINNING.

Said parcel contains 666,591 square feet or 15.3028 acres more or
 less, the 2 parcels combined contain 16.6592 acres more or less.

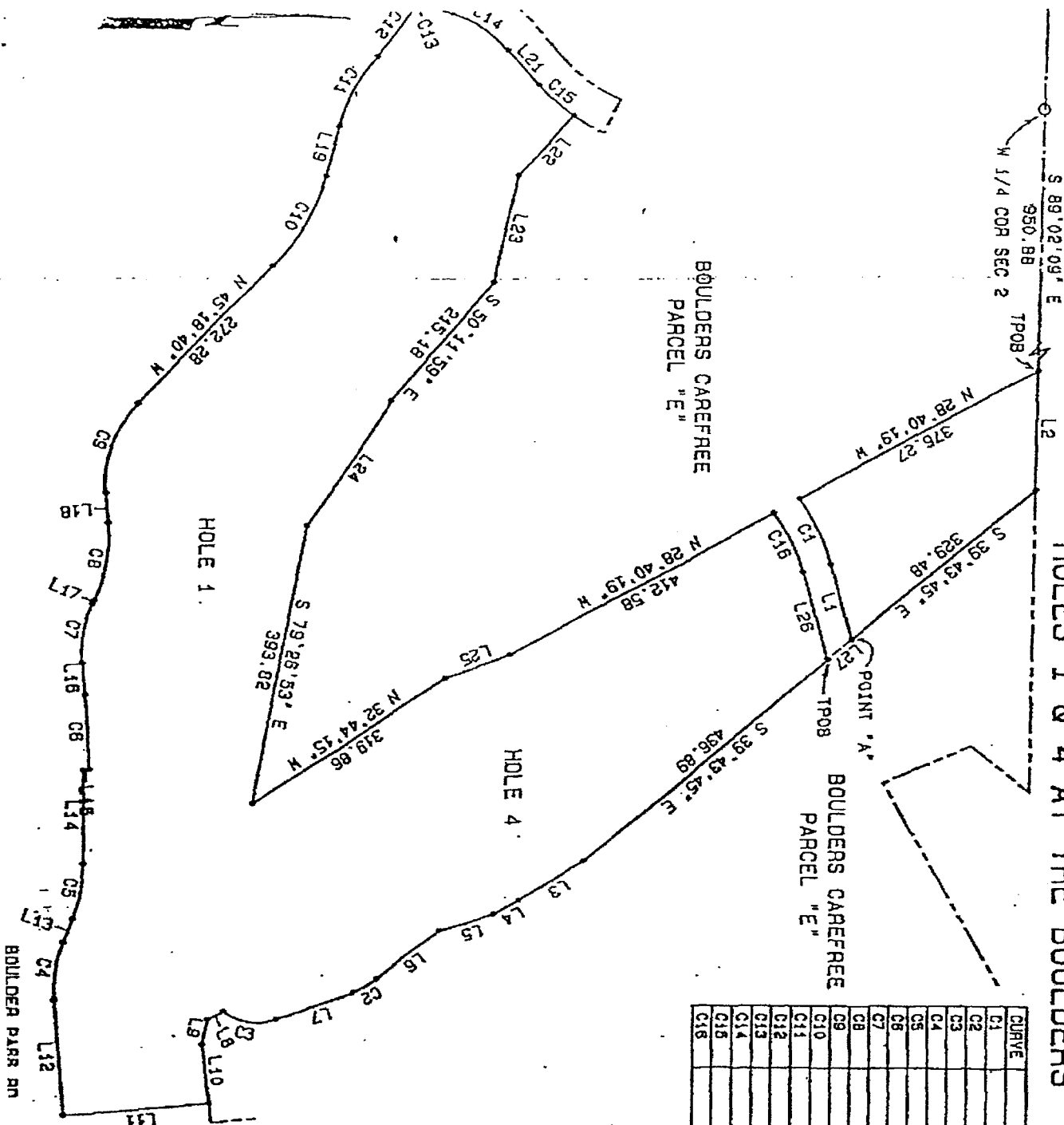
PROPERTY DESCRIPTION SKETCH HOLES 1 & 4 AT THE BOULDERS

CURVE	ARC	DELTA	RADIUS
C1	102.06	18°29'28"	300.00
C2	40.07	17°39'32"	130.00
C3	77.19	55°16'58"	80.00
C4	80.70	25°24'22"	182.00
C5	79.77	21°00'00"	217.63
C6	104.84	5°51'38"	1025.00
C7	83.99	31°02'53"	155.00
C8	110.03	30°45'12"	205.00
C9	135.95	50°15'17"	155.00
C10	146.43	30°30'30"	275.00
C11	112.94	30°56'48"	208.21
C12	80.51	13°10'48"	350.00
C13	16.82	78°30'41"	12.00
C14	93.45	30°35'51"	176.00
C15	63.82	13°17'48"	276.00
C16	93.10	20°30'57"	260.00

BOULDERS CAREFREE
PARCEL "E"

BOULDERS CAREFREE
PARCEL "E"

POINT "A"



LINE	BEARING	DISTANCE
L1	S 74°11'43\"	110.52
L2	S 89°02'09\"	167.94
L3	S 31°30'59\"	104.19
L4	S 28°57'15\"	38.86
L5	S 16°41'44\"	77.45
L6	S 36°53'27\"	110.07
L7	S 19°13'55\"	112.00
L8	S 26°38'57\"	25.00
L9	S 78°08'27\"	36.19
L10	N 83°20'10\"	82.27
L11	S 4°41'15\"	205.64
L12	S 85°35'38\"	161.13
L13	N 69°00'00\"	34.92
L14	S 90°00'00\"	129.59
L15	N 0°00'00\"	7.00
L16	S 84°08'22\"	45.02
L17	N 64°48'45\"	6.09
L18	S 04°28'03\"	41.85
L19	N 76°49'11\"	71.80
L20	N 17°26'31\"	40.64
L21	N 48°02'21\"	63.42
L22	S 48°17'07\"	111.00
L23	S 77°33'43\"	153.34
L24	S 55°04'43\"	211.86
L25	N 20°13'18\"	93.87
L26	N 74°11'43\"	128.27
L27	S 39°43'45\"	43.76

PROPERTY DESCRIPTION
GOLF COURSE HOLES 2 AND 3
AT THE BOULDERS

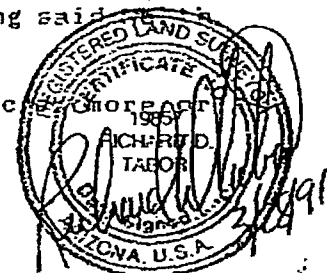
South Course

That part of the Southwest quarter of Section 2 and the Southeast quarter of Section 3, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the West quarter corner of said Section 2;
thence South 89 degrees 02 minutes 09 seconds East along the North line of said Southwest quarter a distance of 428.07 feet to the Northwest boundary corner of BOULDERS CAREFREE PARCEL "E", according to Book 343 of Maps, Page 18, records of Maricopa County, the following courses follow the westerly boundary of said Parcel "E" until otherwise noted;
thence South 00 degrees 58 minutes 53 seconds West 159.63 feet;
thence South 05 degrees 33 minutes 13 seconds East 107.50 feet to a point on a curve, the radius of which bears South 07 degrees 32 minutes 41 seconds East a distance of 170.00 feet therefrom;
thence southwesterly along the arc of said curve through a central angle of 15 degrees 55 minutes 09 seconds a distance of 47.23 feet to a point of tangency;
thence South 66 degrees 32 minutes 10 seconds West 58.59 feet to the beginning of a curve concave northwesterly and having a radius of 135.00 feet;
thence southwesterly along the arc of said curve through a central angle of 28 degrees 47 minutes 42 seconds a distance of 67.85 feet to the beginning of a compound curve concave northeasterly and having a radius of 12.00 feet;
thence northwesterly along the arc of said curve through a central angle of 66 degrees 15 minutes 05 seconds a distance of 13.88 feet to the beginning of a reverse curve concave southerly and having a radius of 45.00 feet;
thence westerly along the arc of said curve through a central angle of 131 degrees 08 minutes 54 seconds a distance of 103.00 feet;
thence North 89 degrees 26 minutes 05 seconds West leaving said curve a distance of 229.73 feet;
thence South 24 degrees 24 minutes 01 seconds West 347.53 feet;
thence North 80 degrees 38 minutes 53 seconds East 418.51 feet to the beginning of a non-tangent curve, the radius of which bears South 06 degrees 01 minutes 54 seconds West a distance of 100.53 feet therefrom;
thence southeasterly along the arc of said curve through a central angle of 44 degrees 31 minutes 02 seconds a distance of 78.11 feet to the beginning of a non-tangent curve, the radius of which bears South 46 degrees 22 minutes 10 seconds West a distance of 100.00 feet therefrom;
thence southeasterly along the arc of said curve through a central angle of 20 degrees 41 minutes 15 seconds a distance of 36.11 feet to the beginning of a non-tangent curve, the radius of which bears South 83 degrees 57 minutes 42 seconds West a

distance of 75.00 feet therefrom;
 thence southwesterly along the arc of said curve through a central angle of 63 degrees 23 minutes 15 seconds a distance of 82.97 feet to a point of tangency;
 thence South 57 degrees 20 minutes 57 seconds West 45.50 feet;
 thence South 06 degrees 04 minutes 59 seconds East 69.26 feet;
 thence South 58 degrees 13 minutes 23 seconds East 56.93 feet;
 thence South 86 degrees 03 minutes 28 seconds East 119.38 feet;
 thence South 17 degrees 26 minutes 31 seconds West leaving the boundary of said Parcel "E" a distance of 26.30 feet to the beginning of a curve concave northwesterly and having a radius of 12.00 feet;
 thence southwesterly along the arc of said curve through a central angle of 92 degrees 37 minutes 23 seconds a distance of 19.40 feet to the beginning of a reverse curve concave southeasterly and having a radius of 350.00 feet;
 thence southwesterly along the arc of said curve through a central angle of 57 degrees 12 minutes 42 seconds a distance of 349.49 feet to a point of tangency, said point lying on the northerly right-of-way line of Boulder Pass as described in Instrument number 85-584550, records of Maricopa County;
 thence South 52 degrees 51 minutes 12 seconds West along said right-of-way 48.44 feet to the beginning of a curve concave northwesterly and having a radius of 75.00 feet;
 thence southwesterly along said right-of-way and the arc of said curve through a central angle of 37 degrees 08 minutes 48 seconds a distance of 48.62 feet to a point of tangency;
 thence West along said right-of-way 119.25 feet to the beginning of a curve concave southeasterly and having a radius of 125.00 feet;
 thence southwesterly along said right-of-way and the arc of said curve through a central angle of 28 degrees 13 minutes 51 seconds a distance of 61.59 feet to a point of tangency;
 thence South 61 degrees 46 minutes 09 seconds West along said right-of-way 78.46 feet to the beginning of a curve concave northwesterly and having a radius of 75.00 feet;
 thence westerly along said right-of-way and the arc of said curve through a central angle of 38 degrees 33 minutes 43 seconds a distance of 50.48 feet to a point of tangency;
 thence North 79 degrees 40 minutes 08 seconds West along said right-of-way 154.04 feet to a point on the East right-of-way line of Tom Darlington as shown on the Map of Dedication recorded in Book 303 of Maps, Page 29, records of Maricopa County;
 thence North 10 degrees 19 minutes 52 seconds East along the last described right-of-way line 999.12 feet to a point on the North line of the Southeast quarter of said Section 3;
 thence South 88 degrees 59 minutes 05 seconds East along said line 300.28 feet to the POINT OF BEGINNING.

Said parcel contains 554,642 square feet or 12.7328 acres less.



TOM DARLINGTON
BK 303 PG 29 MCR

N 10°19'52" E
999.12

S 88°59'05" E
300.28
S 89°02'09" E
428.07

W 1/4 COR SEC 2
P.O.B.

PROPERTY DESCRIPTION SKETCH HOLES 2 & 3 AT THE BOULDERS

HOLE 3

BOULDERS CAREFREE
PARCEL "E"

HOLE 2

L12 C11 L11 C10 L10 C9
BOULDER PASS RD
85-584650 MCR

CURVE	ARC	DELTA	RADIUS
C1	47.23	15°56'09"	170.00
C2	67.85	28°47'42"	135.00
C3	13.88	66°16'05"	12.00
C4	103.00	131°08'54"	46.00
C5	78.11	44°31'02"	100.53
C6	38.11	20°41'15"	100.00
C7	82.87	63°23'16"	76.00
C8	19.40	92°37'23"	12.00
C9	48.82	37°08'48"	76.00
C10	61.56	28°13'51"	125.00

LINE	BEARING	DISTANCE
L1	S 0°58'53" W	189.63
L2	S 5°33'13" E	107.50
L3	S 66°32'10" W	58.59
L4	S 67°20'57" W	45.50
L5	S 6°04'59" E	69.26
L6	S 58°13'23" E	56.93
L7	S 86°03'28" E	119.38
L8	S 17°26'31" W	28.30
L9	S 62°51'12" W	48.44
L10	S 80°00'00" W	119.25

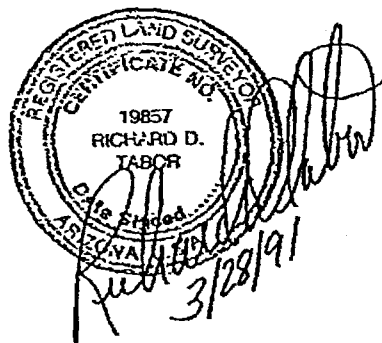
PROPERTY DESCRIPTION
REVISED LAKE HOLE NUMBER 2
AT THE BOULDERS

That part of the Southeast quarter of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, bounded on the Northeast by the southeasterly line of BOULDERS CAREFREE UNIT FIVE, according to Book 212 of Maps, Page 40, and on the Southeast by the northeasterly line of BOULDERS CAREFREE UNIT SIX, according to Book 268 of Maps, Page 17 records of Maricopa County, and being more particularly described as follows:

BEGINNING at the Southeast corner of Lot 21 of said UNIT FIVE;
thence North 31 degrees 03 minutes 34 seconds East along said Unit Five boundary a distance of 142.23 feet;
thence South 71 degrees 20 minutes 49 seconds East continuing along said Unit Five boundary a distance of 22.45 feet to a point on a curve, the radius of which bears North 87 degrees 57 minutes 15 seconds East a distance of 233.03 feet therefrom;
thence southerly continuing along said Unit Five boundary and the arc of said curve through a central angle of 20 degrees 18 minutes 28 seconds a distance of 82.59 feet to a point of tangency;
thence South 22 degrees 21 minutes 13 seconds East continuing along said Unit Five boundary a distance of 112.31 feet;
thence South 58 degrees 26 minutes 38 seconds West continuing along said Unit Five boundary a distance of 125.97 feet;
thence South 87 degrees 00 minutes 17 seconds West leaving said Unit Five boundary a distance of 462.44 feet to the Northeast corner of Lot 2012 of said BOULDERS CAREFREE UNIT SIX;
thence North 79 degrees 34 minutes 56 seconds West along said Unit Six boundary a distance of 188.24 feet;
thence South 87 degrees 15 minutes 45 seconds West continuing along said Unit Six boundary a distance of 240.77 feet;
thence North 70 degrees 55 minutes 57 seconds West continuing along said Unit Six boundary a distance of 114.77 feet;
thence North 48 degrees 34 minutes 49 seconds West continuing along said Unit Six boundary a distance of 105.00 feet;
thence North 32 degrees 32 minutes 35 seconds West continuing along said Unit Six boundary a distance of 86.05 feet;
thence North 51 degrees 34 minutes 40 seconds West continuing along said Unit Six boundary a distance of 221.00 feet;
thence North 34 degrees 28 minutes 57 seconds West continuing along said Unit Six boundary a distance of 140.77 feet to the beginning of a curve concave southeasterly and having a radius of 130.00 feet;
thence northeasterly along the arc of said curve, leaving said Unit Six boundary a distance of 375.93 feet to a point of tangency on the southeasterly boundary of said Unit Five;
thence South 48 degrees 47 minutes 44 seconds East along said Unit Five boundary a distance of 321.41 feet;
thence South 79 degrees 46 minutes 41 seconds East continuing along said Unit Five boundary a distance of 217.91 feet;

thence North 88 degrees 30 minutes 38 seconds East continuing along
said Unit ~~Five~~ boundary a distance of 95.01 feet;
thence South 27 degrees 03 minutes 36 seconds West continuing along
said Unit ~~Five~~ boundary a distance of 79.56 feet;
thence South 73 degrees 20 minutes 21 seconds East continuing along
said Unit ~~Five~~ boundary a distance of 143.00 feet;
thence South 77 degrees 25 minutes 24 seconds East continuing along
said Unit ~~Five~~ boundary a distance of 493.39 feet to the POINT
OF BEGINNING.

Said parcel contains 415,277 square feet or 9.5334 acres more or
less.





BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
BOULDERS 9 GOLF COURSE
HOLE NO. ■

#5 South Course

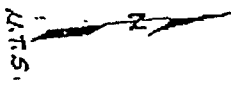
That portion of the Southwest one-quarter (SW 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Southwest corner of said Section 2;
thence North 47° 50' 43" East, 966.95 feet to THE TRUE
POINT OF BEGINNING;
thence North 01° 02' 06" East, 355.17 feet;
thence North 70° 33' 49" East, 75.15 feet;
thence South 89° 35' 40" East, 463.84 feet;
thence North 63° 28' 13" East, 316.93 feet;
thence North 85° 11' 59" East, 764.44 feet;
thence South 10° 47' 42" West, 185.32 feet;
thence North 56° 00' 56" West, 49.14 feet;
thence South 66° 31' 54" West, 779.69 feet;
thence North 85° 55' 26" West, 415.71 feet;
thence South 69° 45' 07" West, 355.31 feet;
thence South 63° 26' 37" West, 53.40 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 436,296 square feet, 10.0160 Acres, more or less.



5246 South 40th Street
Phoenix, Arizona 85040
(602) 437-3733



216-01-TM-45 OCT. 30. 1986



HOOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL-DESCRIPTION
OF
BOULDERS 9 GOLF COURSE
HOLE NO. 1

** 6 South Course*

That portion of the Southwest one-quarter (SW 1/4) of Section 2, and Northwest one-quarter (NW 1/4) of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

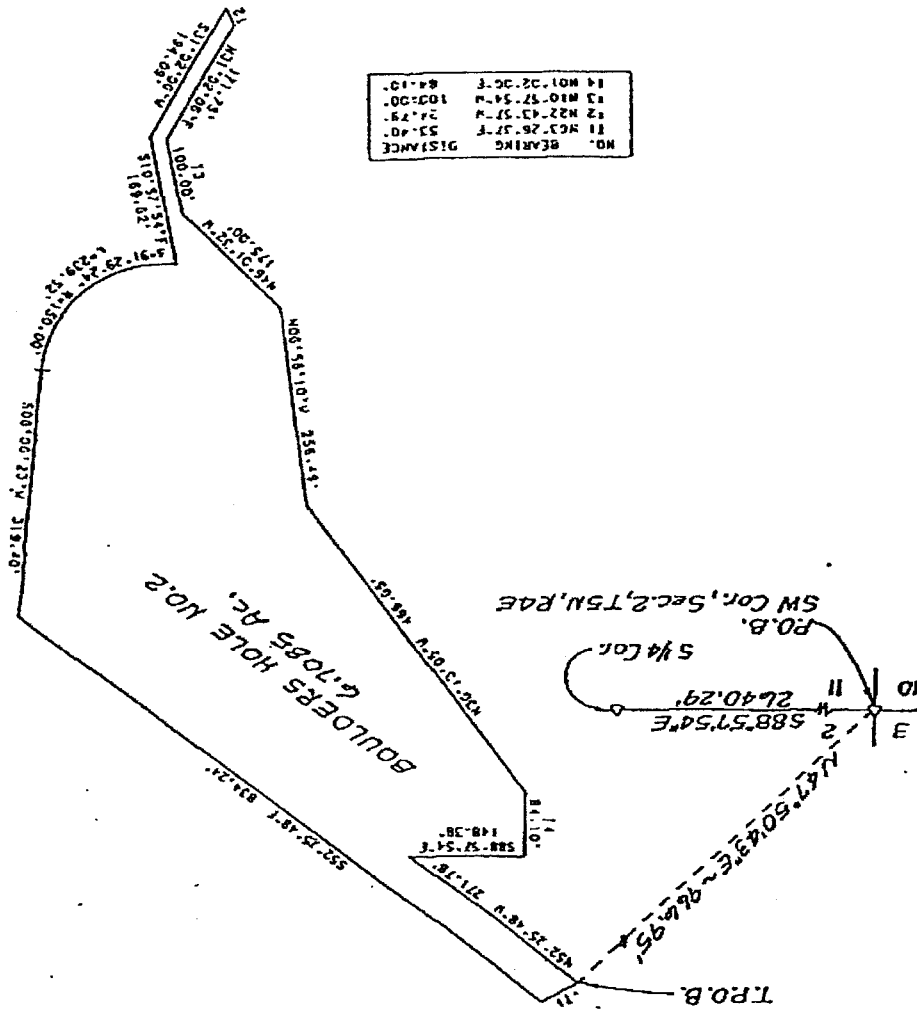
Commencing at the Southwest corner of said Section 2;
thence North 47° 50' 43" East, 966.95 feet to THE TRUE
POINT OF BEGINNING;
thence North 63° 26' 37" East, 53.40 feet;
thence South 52° 25' 48" East, 834.24 feet;
thence South 06° 06' 23" West, 319.40 feet to the
beginning of a curve concave to the Northwest, having a
radius of 150.00 feet;
thence Southwesterly along said curve through a central
angle of 91° 29' 24", an arc distance of 239.52 feet;
thence on a non-tangent line, South 10° 57' 54" East,
169.62 feet;
thence South 31° 02' 06" West, 194.09 feet;
thence North 22° 43' 57" West, 24.79 feet;
thence North 31° 02' 06" East, 171.75 feet;
thence North 10° 57' 54" West, 100.00 feet;
thence North 46° 01' 32" West, 175.00 feet;
thence North 06° 56' 10" West, 256.49 feet;
thence North 36° 13' 05" West, 466.65 feet;
thence North 01° 02' 06" East, 84.10 feet;
thence South 88° 57' 54" East, 148.38 feet;
thence North 52° 25' 48" West, 271.78 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 292,221
square feet, 6.7085 Acres, more or less.



5246 South 40th Street
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NO.	BEARING	DISTANCE
14	N01°22'20"E	84.13'
13	N10°57'54"E	100.00'
12	N22°43'57"E	24.79'
11	N63°26'37"E	53.40'



N.T.S.



DOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
BOULDERS 9 GOLF COURSE
HOLE NO. ■

**7 South Course*

That portion of the Northwest one-quarter (NW 1/4) of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Northwest corner of said Section 11;
thence South 65° 18' 36" East, 370.59 feet to THE TRUE
POINT OF BEGINNING;

thence North 68° 40' 25" East, 229.78 feet;

thence South 48° 36' 55" East, 594.91 feet;

thence South 13° 29' 59" West, 93.30 feet;

thence South 76° 30' 00" East, 175.00 feet;

thence South 22° 43' 57" East, 24.79 feet;

thence North 76° 30' 00" West, 143.36 feet to the
beginning of the non-tangent curve concave to the North,
having a radius of 75.00 feet and a radial bearing to said
beginning of South 45° 56' 36" East;

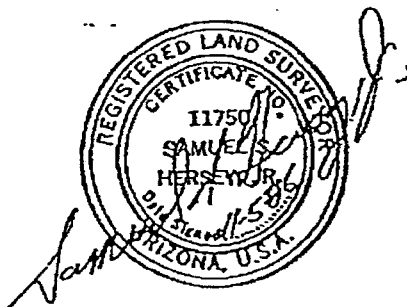
thence Westerly along said curve through a central
angle of 81° 00' 22", an arc distance of 106.04 feet to the
point of tangency;

thence North 54° 56' 14" West, 489.47 feet;

thence WEST 143.90 feet;

thence North 13° 16' 02" West, 163.12 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 141,790
square feet, 3.2551 Acres, more or less.



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BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
BOULDERS 9 GOLF COURSE
HOLE NO. ■

#8 South Course

That portion of the Northwest one-quarter (NW 1/4) of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Northwest corner of said Section 11;
thence South 65° 18' 36" East, 370.59 feet to THE TRUE

POINT OF BEGINNING;

thence South 13° 16' 02" East, 163.12 feet;

thence South 13° 56' 09" East, 660.55 feet;

thence South 02° 27' 23" East, 573.63 feet to the
beginning of a curve concave to the North, having a radius
of 150.00 feet;

thence Southwesterly, Westerly, and Northwesterly
through a central angle of 180° 00' 00", an arc distance of
471.24 feet to the point of tangency;

thence North 02° 27' 23" West, 557.38 feet;

thence North 03° 16' 10" West, 832.45 feet;

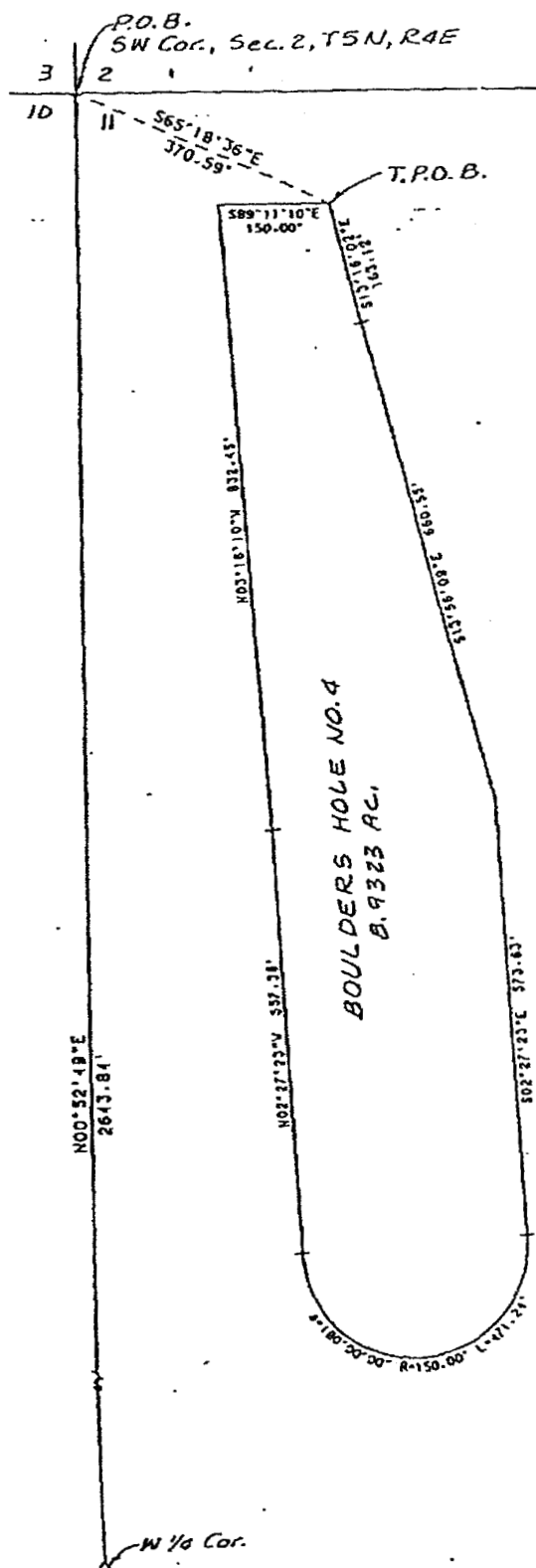
thence South 89° 11' 10" East, 150.00 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 389,092
square feet, 8.9323 Acres, more or less.

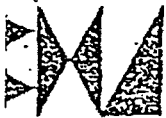


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N.T.S.



PL-01-TM-15 OCT 30 1965



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
BOULDERS 9 GOLF COURSE
HOLE NO. ■ *#9 South Course*

That portion of the Northwest one-quarter (NW 1/4) of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 11;

thence South 27° 30' 51" West, 1,470.28 feet to THE TRUE POINT OF BEGINNING;

thence South 28° 45' 37" West, 59.70 feet to the beginning of a non-tangent curve concave to the Northwest, having a radius of 150.00 feet and a radial bearing to said beginning of North 21° 15' 48" East;

thence Southeasterly, Southerly, and Southwesterly along said curve through a central angle of 170° 33' 52", an arc distance of 446.54 feet to the point of tangency;

thence North 78° 10' 20" West, 425.80 feet;

thence South 89° 56' 01" West, 747.13 feet to the beginning of a curve concave to the Northeast, having a radius of 75.00 feet;

thence Northwesterly along said curve through a central angle of 90° 43' 30", an arc distance of 118.76 feet;

thence on a non-tangent line, North 89° 20' 29" West, 49.99 feet;

thence North 02° 27' 23" West, 20.03 feet;

thence South 89° 20' 29" East, 53.79 feet to the beginning of a non-tangent curve concave to the Southeast, having a radius of 75.00 feet and a radial bearing to said beginning of North 73° 52' 32" West;

thence Northeasterly along said curve through a central angle of 62° 58' 48", an arc distance of 82.44 feet to the point of tangency;

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Legal Description
Boulders 9, Hole 5
Page 2

216-01-TM-45
Oct. 30, 1986
J.S.

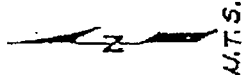
thence North 79° 06' 17" East, 798.32 feet;
thence South 78° 32' 52" East, 463.99 feet;
thence North 28° 45' 37" East, 61.23 feet;
thence South 70° 17' 09" East, 25.37 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 349,526
square feet, 8.0240 Acres, more or less.



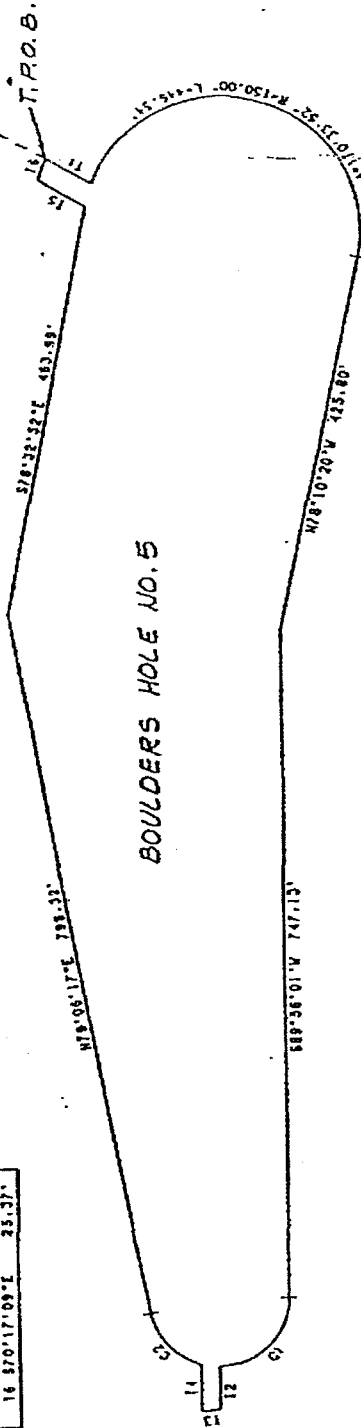
S 88° 57' 54" E
2600.29

R.O.B.
S 1/4 Cor, Sec 2, T6N, R4E



NO.	DEG.	ANGLE	RADIUS	LENGTH
C1	90° 43' 30"	75.00'	118.78'	
C2	62° 58' 48"	75.00'	82.44'	

NO.	BEARING	DISTANCE
11	S 28° 45' 37" W	58.70'
12	N 88° 20' 23" W	48.98'
13	N 02° 27' 23" W	20.03'
14	S 88° 20' 23" E	53.78'
15	N 28° 45' 37" E	61.23'
16	S 70° 17' 09" E	25.37'



BOULDERS HOLE NO. 5

216-01-TM-65 OCT 30, 1986

PROPERTY DESCRIPTION
REVISED BOULDERS SOUTH HOLE NO. 10
3-31-94

South Course

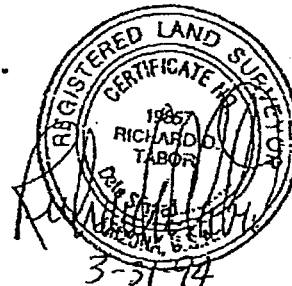
That part of the Northwest quarter of Section 11 , Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, bounded on the easterly, southerly and aportion of the westerly sides by THE FIFTH GREEN REPLAT according to Book 339 of Maps, Page 3, and a portion of the westerly side by the easterly line of PARCEL "M" AT THE BOULDERS according to Book 357 of Maps, Page 33, and a portion of the westerly side by the easterly line of Lots 16 and 17 of GREYTHORN AT THE BOULDERS according to Book 343 of Maps, Page 36, records of Maricopa County, Arizona, and being more particularly described as follows:

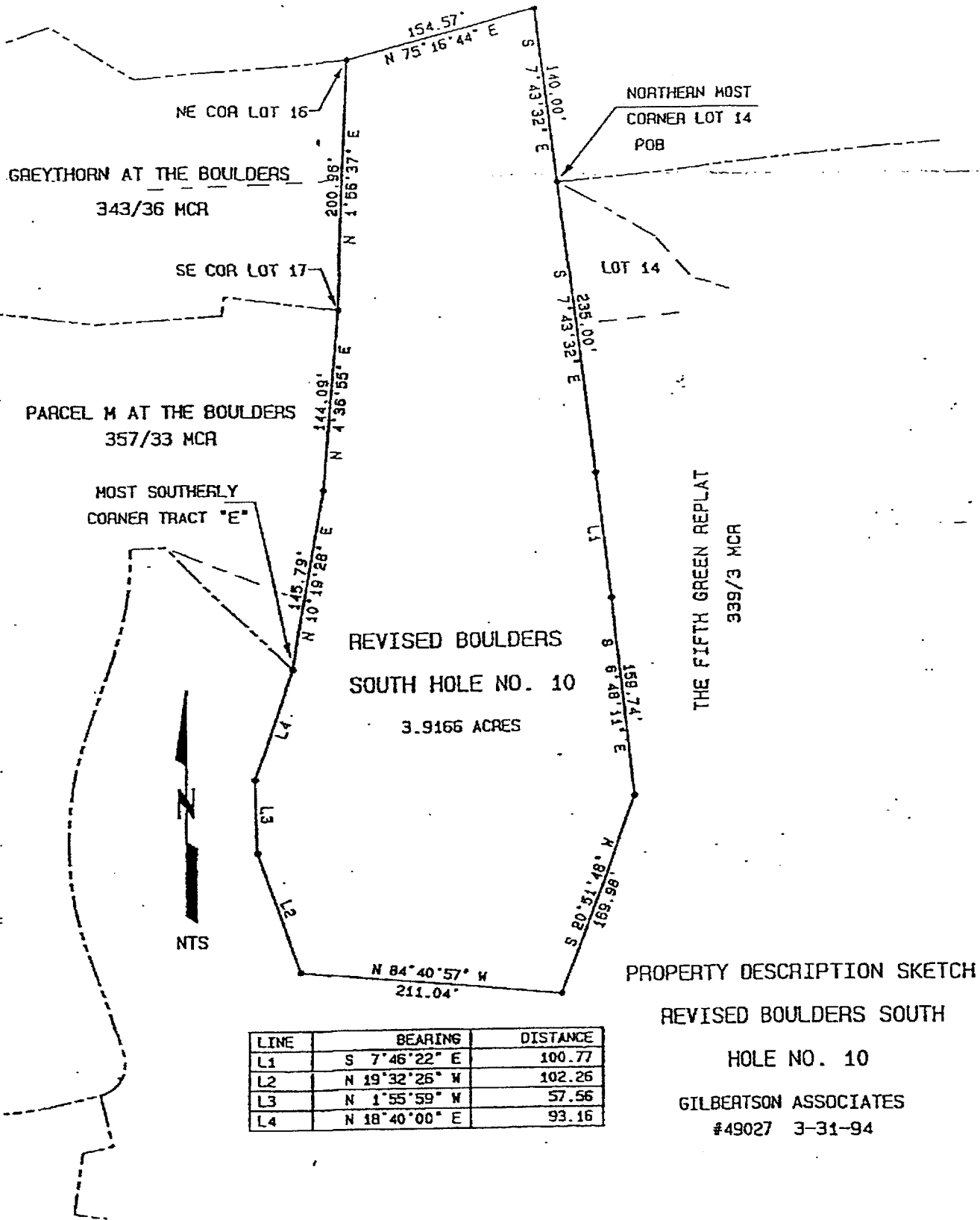
BEGINNING at the northern most corner of Lot 14 of said FIFTH GREEN REPLAT, the following courses follow the boundary line of said FIFTH GREEN REPLAT until otherwise mentioned;

thence South 07 degrees 43 minutes 32 seconds East 235.00 feet;
thence South 07 degrees 46 minutes 22 seconds East 100.77 feet;
thence South 06 degrees 48 minutes 11 seconds East 159.74 feet;
thence South 20 degrees 51 minutes 48 seconds West 169.98 feet;
thence North 84 degrees 40 minutes 57 seconds West 211.04 feet;
thence North 19 degrees 32 minutes 26 seconds West 102.26 feet;
thence North 01 degrees 55 minutes 59 seconds West 57.56 feet;
thence North 18 degrees 40 minutes 00 seconds East 93.16 feet to
the most southerly corner of Tract "E" of said PARCEL "M" AT
THE BOULDERS;
thence North 10 degrees 19 minutes 28 seconds East leaving the
boundary line of said FIFTH GREEN REPLAT, along the easterly
line of said PARCEL "M" a distance of 145.79 feet;
thence North 04 degrees 36 minutes 55 seconds East continuing along
said easterly line a distance of 144.09 feet to the Southeast
corner of said Lot 17 of GREYTHORN AT THE BOULDERS;
thence North 01 degrees 56 minutes 37 seconds East leaving the
easterly line of said PARCEL "M", along the East line of said
Lots 16 and 17 a distance of 200.96 feet to the Northeast
corner of said Lot 16;
thence North 75 degrees 16 minutes 44 seconds East leaving said
GREYTHORN AT THE BOULDERS a distance of 154.57 feet;
thence South 07 degrees 43 minutes 32 seconds East 140.00 feet to
the POINT OF BEGINNING.

Said parcel contains 3.9166 acres more or less.

GILBERTSON ASSOCIATES #49027 3-31-94





LINE	BEARING	DISTANCE
L1	S 7° 46' 22\" E	100.77
L2	N 19° 32' 26\" W	102.26
L3	N 1° 55' 59\" W	57.56
L4	N 18° 40' 00\" E	93.16

PROPERTY DESCRIPTION SKETCH

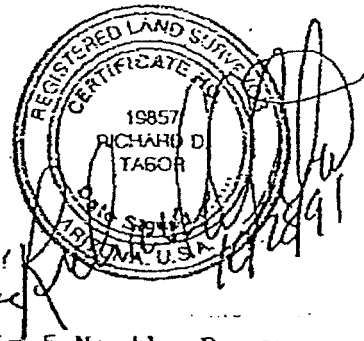
REVISED BOULDERS SOUTH

HOLE NO. 10

GILBERTSON ASSOCIATES

#49027 3-31-94

PROPERTY DESCRIPTION
GOLF COURSE HOLE NUMBER 11
AT THE BOULDERS



That part of the North half of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the northern most common boundary corner of THE FIFTH GREEN REPLAT according to Book 339 of Maps, Page 3, and THE FIFTH GREEN UNIT TWO according to Book 342 of Maps, Page 3, records of Maricopa County;

thence South 35 degrees 53 minutes 32 seconds West along the boundary of said Fifth Green a distance of 107.02 feet;

thence South 55 degrees 50 minutes 54 seconds West continuing along said boundary 998.72 feet;

thence South 88 degrees 08 minutes 01 seconds West continuing along said boundary 146.93 feet;

thence North 08 degrees 37 minutes 46 seconds East continuing along said boundary 79.37 feet;

thence North 45 degrees 03 minutes 30 seconds East continuing along said boundary 898.50 feet;

thence North 60 degrees 12 minutes 27 seconds East leaving said boundary a distance of 272.38 feet;

thence North 74 degrees 01 minutes 00 seconds East 258.70 feet to a point on a curve, the radius of which bears North 55 degrees 30 minutes 49 seconds West a distance of 75.00 feet therefrom;

thence northerly along the arc of said curve through a central angle of 43 degrees 07 minutes 20 seconds a distance of 56.45 feet to the most southerly boundary corner of ADOBES de la TIERRA, according to Book 310 of Maps, Page 23, records of Maricopa County;

thence North 81 degrees 21 minutes 51 seconds East along said southerly boundary 144.48 feet;

thence North 59 degrees 08 minutes 32 seconds East 167.90 feet;

thence South 88 degrees 45 minutes 38 seconds East 150.84 feet;

thence South 52 degrees 10 minutes 48 seconds East 97.00 feet to a point on the westerly right-of-way line of Ironwood Drive, as recorded in instrument number 89-286513, records of Maricopa County, said point also lying on a curve, the radius of which bears North 77 degrees 13 minutes 45 seconds East a distance of 505.00 feet therefrom;

thence southeasterly along said right-of-way line and the arc of said curve through a central angle of 15 degrees 10 minutes 36 seconds a distance of 133.77 feet to a point on the North line of said Fifth Green Unit Two;

thence South 63 degrees 26 minutes 53 seconds West along said North line a distance of 266.32 feet;

thence South 74 degrees 11 minutes 15 seconds West 448.77 feet to the POINT OF BEGINNING.

Said parcel contains 464,608 square feet or 10.6659 acres more or less.

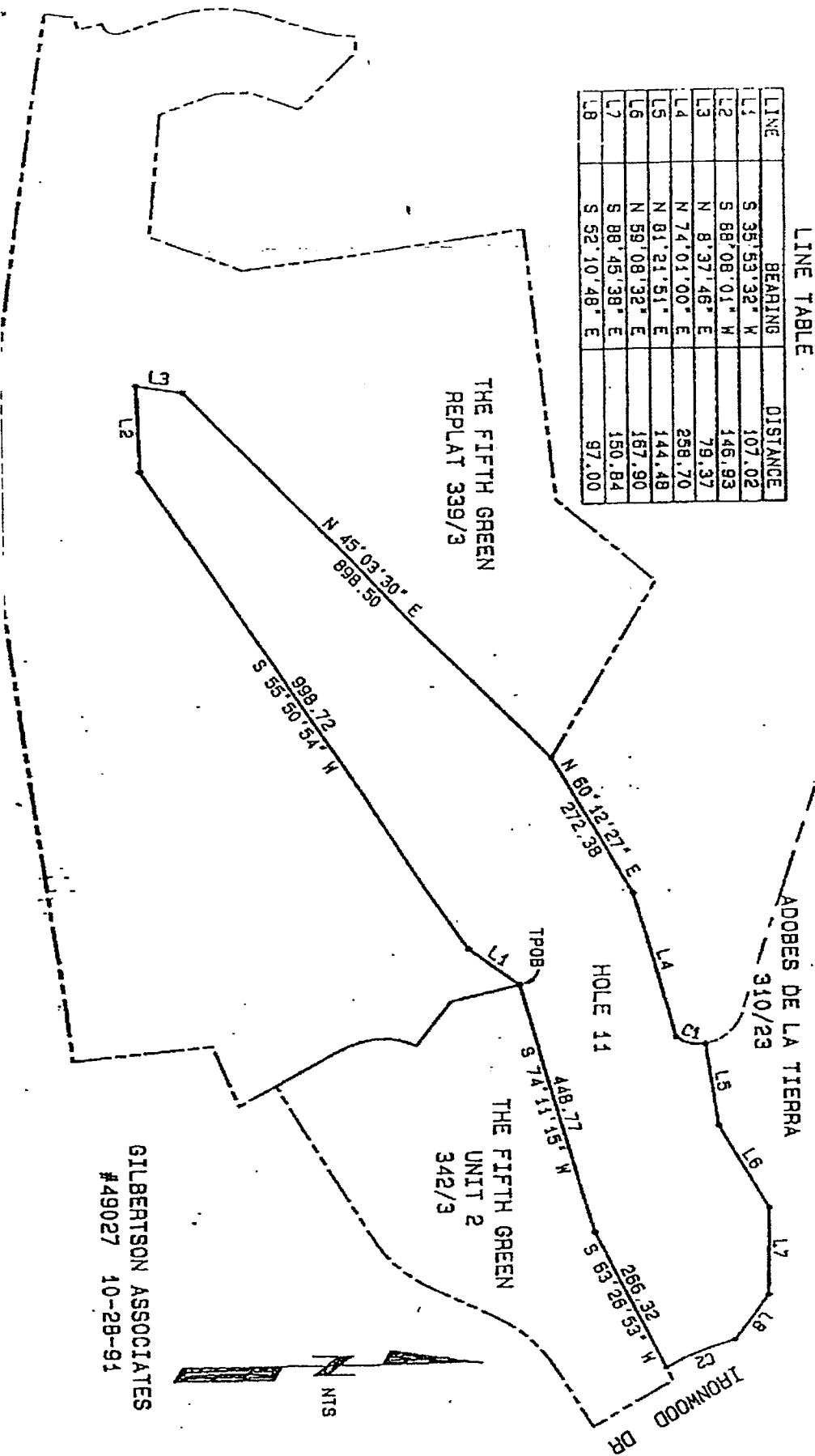
PROPERTY DESCRIPTION SKETCH HOLE 11 AT THE BOULDERS (REVISED 10-28-91)

CURVE TABLE

CURVE	ARC	DELTA	RADIUS
C1	56.45	43°07'20"	75.00
C2	133.77	15°10'36"	505.00

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 35°53'32" W	107.02
L2	S 68°08'01" W	146.93
L3	N 8°37'48" E	79.37
L4	N 74°01'00" E	258.70
L5	N 81°21'51" E	144.48
L6	N 59°08'32" E	167.90
L7	S 88°45'38" E	150.84
L8	S 52°10'48" E	97.00



GILBERTSON ASSOCIATES
#49027 10-28-91

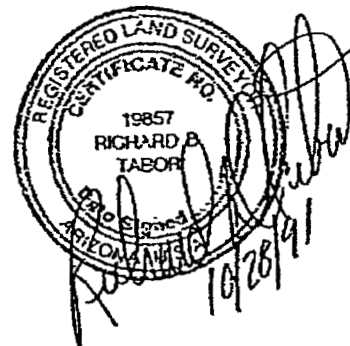
PROPERTY DESCRIPTION
GOLF COURSE HOLES 12 AND 13 *South Course*
AT THE BOULDERS

That part of the Southeast quarter of Section 2 and the Northeast quarter of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 11;
thence North 88 degrees 58 minutes 11 seconds West along the North line of said Northeast quarter a distance of 315.80 feet to the TRUE POINT OF BEGINNING;
thence South 16 degrees 09 minutes 50 seconds East 69.38 feet;
thence South 09 degrees 33 minutes 05 seconds East 788.46 feet to the beginning of a curve concave northwesterly and having a radius of 75.00 feet;
thence southwesterly along the arc of said curve through a central angle of 158 degrees 05 minutes 00 seconds a distance of 206.93 feet;
thence South 02 degrees 27 minutes 25 seconds East leaving said curve a distance of 483.03 feet;
thence South 06 degrees 09 minutes 38 seconds West 506.32 feet to the beginning of a curve concave northerly and having a radius of 75.00 feet;
thence westerly along the arc of said curve through a central angle of 162 degrees 30 minutes 16 seconds a distance of 212.72 feet to a point of tangency;
thence North 11 degrees 20 minutes 06 seconds West 348.18 feet;
thence North 10 degrees 16 minutes 43 seconds West 160.51 feet;
thence North 01 degrees 39 minutes 58 seconds West 561.39 feet;
thence North 68 degrees 41 minutes 38 seconds East 107.58 feet;
thence South 84 degrees 42 minutes 37 seconds East 144.06 feet;
thence North 50 degrees 45 minutes 27 seconds East 46.55 feet;
thence North 17 degrees 44 minutes 22 seconds West 205.62 feet;
thence North 28 degrees 13 minutes 32 seconds West 296.86 feet;
thence North 20 degrees 23 minutes 33 seconds West 181.33 feet;
thence North 01 degrees 41 minutes 05 seconds West 141.34 feet;
thence North 39 degrees 25 minutes 45 seconds West 100.32 feet;
thence South 67 degrees 45 minutes 07 seconds West 63.53 feet;
thence South 67 degrees 45 minutes 07 seconds West 148.12 feet to a point on the easterly right-of-way line of Ironwood Drive as recorded in instrument number 89-286513, records of Maricopa County;
thence North 43 degrees 00 minutes 19 seconds West along said right-of-way a distance of 226.19 feet;
thence North 64 degrees 57 minutes 04 seconds East leaving said right-of-way a distance of 39.95 feet;
thence South 43 degrees 00 minutes 19 seconds East 138.00 feet;
thence South 87 degrees 59 minutes 28 seconds East 91.93 feet;
thence North 70 degrees 08 minutes 01 seconds East 44.27 feet;
thence North 30 degrees 16 minutes 43 seconds East 115.33 feet;
thence North 16 degrees 09 minutes 50 seconds West 79.94 feet to the beginning of a curve concave southeasterly and having a

radius of 150.00 feet;
thence northeasterly along the arc of said curve through a central
angle of 180 degrees 00 minutes 00 seconds a distance of
471.24 feet to a point of tangency;
thence South 16 degrees 09 minutes 50 seconds East 358.59 to the
TRUE POINT OF BEGINNING.

Said parcel contains 642,938 square feet or 14.7598 acres more or
less.



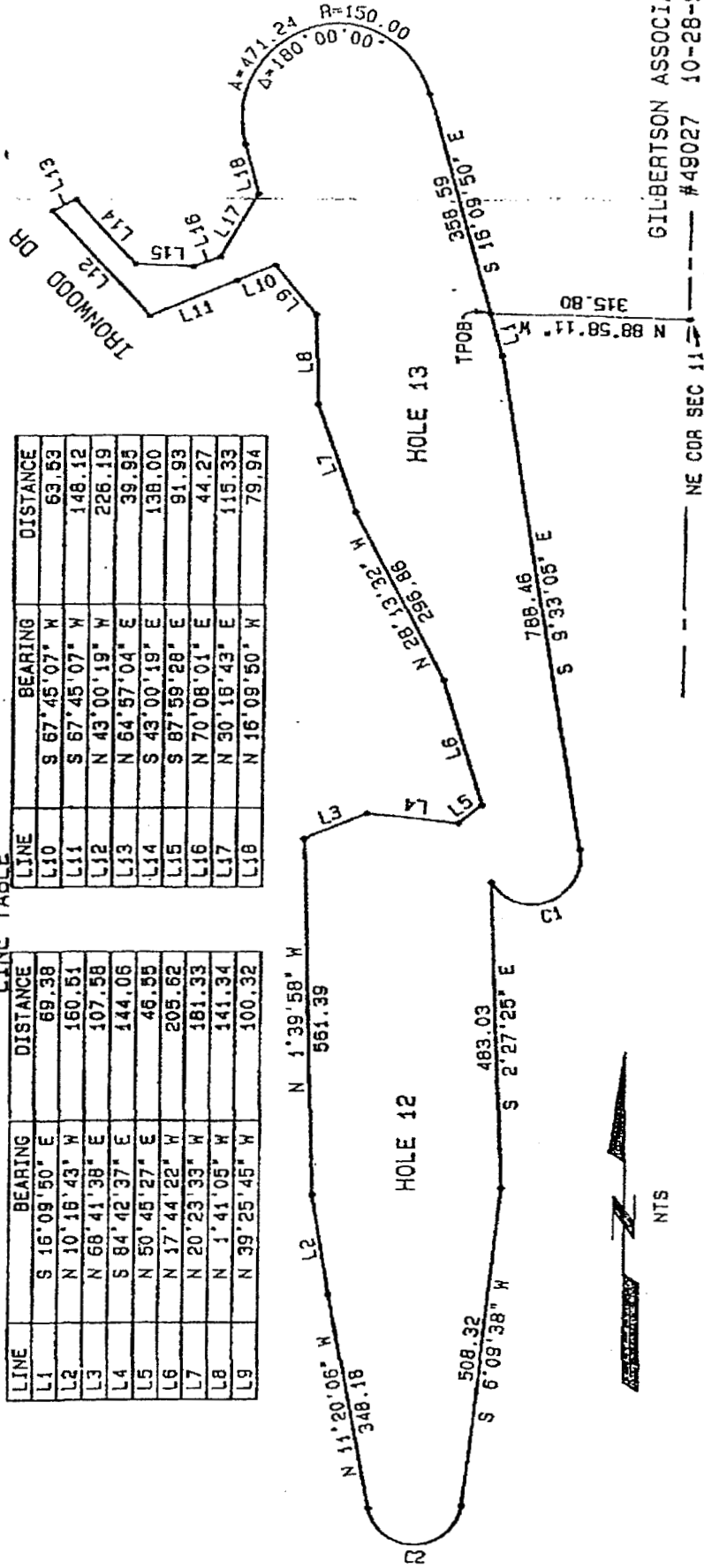
PROPERTY DESCRIPTION SKETCH HOLES 12 & 13 AT THE BOULDERS (REVISED 10-28-91)

CURVE TABLE

CURVE	ARC	DELTA	RADIUS
C1	206.93	168°05'00"	75.00
C2	212.72	162°30'16"	75.00

LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S 16°09'50" E	69.38	L10	S 67°45'07" W	63.53
L2	N 10°16'43" W	160.51	L11	S 67°45'07" W	148.12
L3	N 68°41'38" E	107.58	L12	N 43°00'19" W	226.19
L4	S 84°42'37" E	144.06	L13	N 64°57'04" E	39.95
L5	N 50°45'27" E	46.55	L14	S 43°00'19" E	138.00
L6	N 17°44'22" W	205.62	L15	S 87°59'28" E	91.93
L7	N 20°23'33" W	181.33	L16	N 70°08'01" E	44.27
L8	N 1°41'05" W	141.34	L17	N 30°16'43" E	115.33
L9	N 39°25'45" W	100.32	L18	N 16°09'50" W	79.94



NTS

GILBERTSON ASSOCIATES
#49027 10-28-91

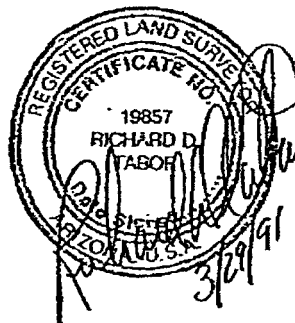
PROPERTY DESCRIPTION
GQLF COURSE HOLE NUMBER 14 *South Course*
AT THE BOULDERS

That part of the North half of Section 11, and the South half of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

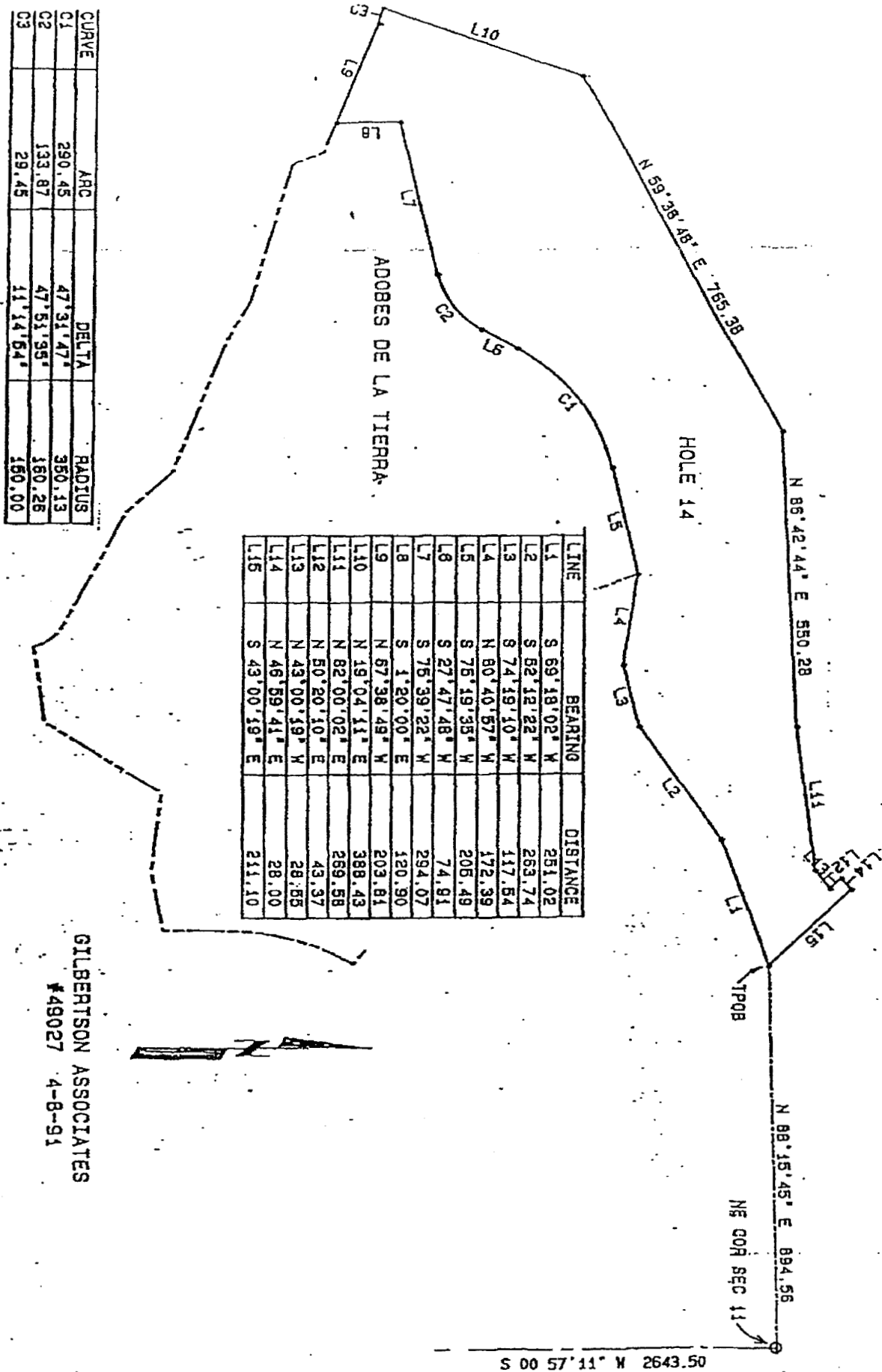
BEGINNING at the Northeast corner of said Section 11, from which the East quarter corner of said Section 11 bears South 00 degrees 57 minutes 11 seconds West a distance of 2643.50 feet therefrom;
thence South 88 degrees 15 minutes 45 seconds West 894.56 feet to a point on the westerly right-of-way line of Ironwood Drive, said point being the TRUE POINT OF BEGINNING;
thence South 69 degrees 18 minutes 02 seconds West 251.02 feet;
thence South 52 degrees 12 minutes 22 seconds West 263.74 feet;
thence South 74 degrees 19 minutes 10 seconds West 117.54 feet;
thence North 80 degrees 40 minutes 57 seconds West 172.39 feet to a corner in the northerly boundary of Adobe de la Tierra as shown on the Plat recorded in Book 310 of Maps, Page 23 records of Maricopa County;
thence South 75 degrees 19 minutes 35 seconds West along said northerly boundary a distance of 205.49 feet to the beginning of a curve concave southeasterly and having a radius of 350.13 feet;
thence southwesterly along said northerly boundary and the arc of said curve through a central angle of 47 degrees 31 minutes 47 seconds a distance of 290.45 feet to a point of tangency;
thence South 27 degrees 47 minutes 48 seconds West along said northerly boundary a distance of 74.91 feet to the beginning of a curve concave northwesterly and having a radius of 160.26 feet;
thence southwesterly along said northerly boundary and the arc of said curve through a central angle of 47 degrees 51 minutes 35 seconds a distance of 133.87 feet to a point of tangency;
thence South 75 degrees 39 minutes 22 seconds West along said northerly boundary a distance of 294.07 feet;
thence South 01 degrees 20 minutes 00 seconds East along said northerly boundary a distance of 120.90 feet to a corner in said northerly boundary;
thence North 67 degrees 38 minutes 49 seconds West leaving said northerly boundary a distance of 203.81 feet to the beginning of a curve concave southwesterly and having a radius of 150.00 feet;
thence northwesterly along the arc of said curve through a central angle of 11 degrees 14 minutes 54 seconds a distance of 29.45 feet;
thence North 19 degrees 04 minutes 11 seconds East leaving said curve a distance of 388.43 feet;
thence North 59 degrees 38 minutes 48 seconds East 765.38 feet;
thence North 86 degrees 42 minutes 44 seconds East 550.28 feet;
thence North 82 degrees 00 minutes 02 seconds East 269.58 feet;
thence North 50 degrees 20 minutes 10 seconds East 43.37 feet;

thence North 43 degrees 00 minutes 19 seconds East 28.55 feet;
thence North 46 degrees 59 minutes 41 seconds East 28.00 feet to a
point on the westerly right-of-way line of said Ironwood
Drive;
thence South 43 degrees 00 minutes 19 seconds East along said
right-of-way a distance of 211.10 feet to the TRUE POINT OF
BEGINNING.

Said parcel contains 558,992 square feet or 12.8327 acres more or
less.



PROPERTY DESCRIPTION SKETCH HOLE 14 AT THE BOULDERS



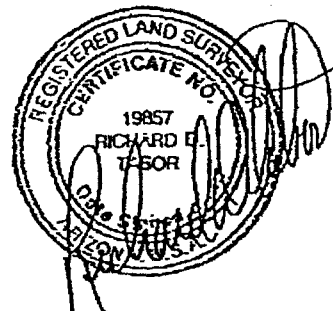
GILBERTSON ASSOCIATES
#49027 4-8-91

PROPERTY DESCRIPTION
GOLF COURSE HOLE NUMBER 15 *South Course*
AT THE BOULDERS

That part of the North half of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the West quarter corner of said Section 11, from which the Northwest corner of said Section 11 bears North 00 degrees 52 minutes 49 seconds East a distance of 2643.84 feet therefrom and the East quarter corner of said Section 11 bears South 88 degrees 58 minutes 07 seconds East a distance of 5277.23 feet therefrom; thence North 59 degrees 00 minutes 03 seconds East 2470.88 feet to the beginning of a curve, the radius of which bears North 14 degrees 41 minutes 32 seconds East a distance of 95.00 feet therefrom, and the TRUE POINT OF BEGINNING; thence northerly along the arc of said curve through a central angle of 181 degrees 23 minutes 07 seconds a distance of 300.75 feet to a point of tangency; thence South 73 degrees 55 minutes 21 seconds East 392.27 feet; thence North 78 degrees 51 minutes 59 seconds East 82.70 feet; thence North 84 degrees 16 minutes 41 seconds East 69.46 feet to a point on a curve, the radius of which bears South 57 degrees 09 minutes 05 seconds East a distance of 75.00 feet therefrom; thence southwesterly along the arc of said curve through a central angle of 21 degrees 41 minutes 40 seconds a distance of 28.40 feet; thence South 84 degrees 16 minutes 41 seconds West leaving said curve a distance of 47.22 feet to a point on a curve, the radius of which bears South 48 degrees 08 minutes 46 seconds West a distance of 107.00 feet therefrom; thence southwesterly along the arc of said curve through a central angle of 146 degrees 32 minutes 46 seconds a distance of 273.68 feet to a point of tangency; thence North 75 degrees 18 minutes 28 seconds West 427.16 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 112,719 square feet or 2.5877 acres more or less.

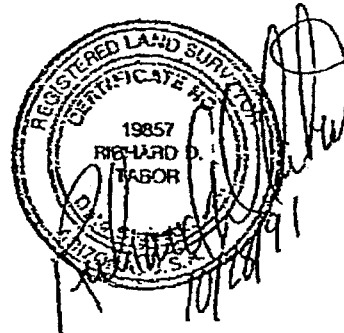


PROPERTY DESCRIPTION
GOLF COURSE HOLE NUMBER 16 *South Green*
AT THE BOULDERS

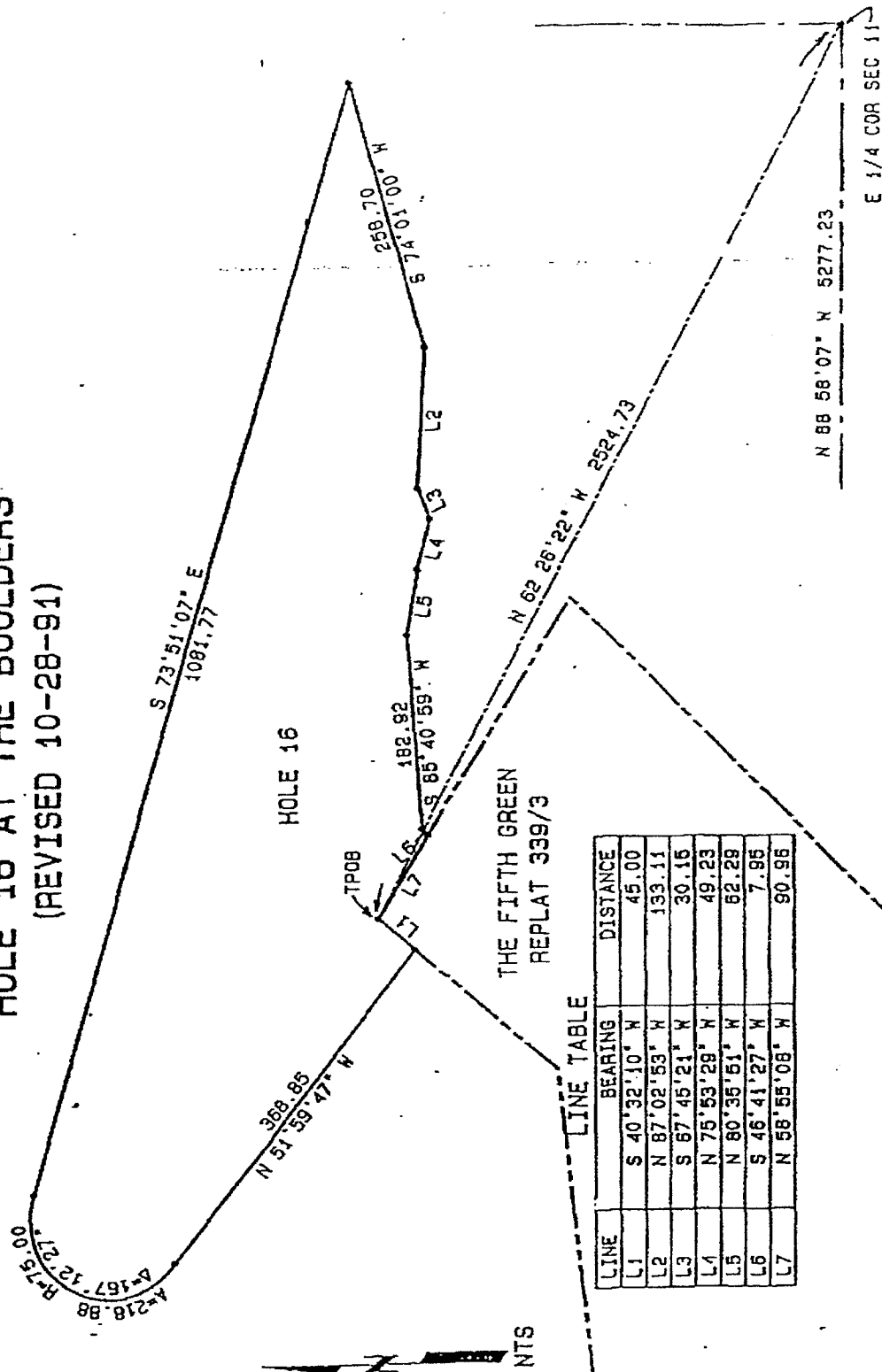
That part of the North half of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the East quarter corner of said Section 11, from which the West quarter corner of said Section 11 bears North 88 degrees 58 minutes 07 seconds West a distance of 5277.23 feet therefrom; thence North 62 degrees 26 minutes 22 seconds West 2524.73 feet to the most northerly boundary corner of THE FIFTH GREEN REPLAT according to Book 339 of Maps; Page 3, records of Maricopa County, said corner being the TRUE POINT OF BEGINNING; thence South 40 degrees 32 minutes 10 seconds West along said boundary a distance of 45.00 feet; thence North 51 degrees 59 minutes 47 seconds West leaving said boundary a distance of 368.85 feet to the beginning of a curve concave southeasterly and having a radius of 75.00 feet; thence northeasterly along the arc of said curve through a central angle of 167 degrees 12 minutes 27 seconds a distance of 218.88 feet to a point of tangency; thence South 73 degrees 51 minutes 07 seconds East 1081.77 feet; thence South 74 degrees 01 minutes 00 seconds West 258.70 feet; thence North 87 degrees 02 minutes 53 seconds West 133.11 feet; thence South 67 degrees 45 minutes 21 seconds West 30.15 feet; thence North 75 degrees 53 minutes 29 seconds West 49.23 feet; thence North 80 degrees 35 minutes 51 seconds West 62.29 feet; thence South 85 degrees 40 minutes 59 seconds West 182.92 feet; thence South 46 degrees 41 minutes 27 seconds West 7.95 feet to a point on said boundary; thence North 58 degrees 55 minutes 08 seconds West along said boundary a distance of 90.96 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 207,024 square feet or 4.7526 acres more or less.



PROPERTY DESCRIPTION SKETCH HOLE 16 AT THE BOULDERS (REVISED 10-28-91)



THE FIFTH GREEN
REPLAT 339/3

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 40° 32' 10" W	45.00
L2	N 87° 02' 53" W	133.11
L3	S 67° 45' 21" W	30.16
L4	N 75° 53' 28" W	49.23
L5	N 80° 35' 51" W	62.28
L6	S 46° 41' 27" W	7.95
L7	N 58° 55' 08" W	90.96

GILBERTSON ASSOCIATES
#49027 10-28-91

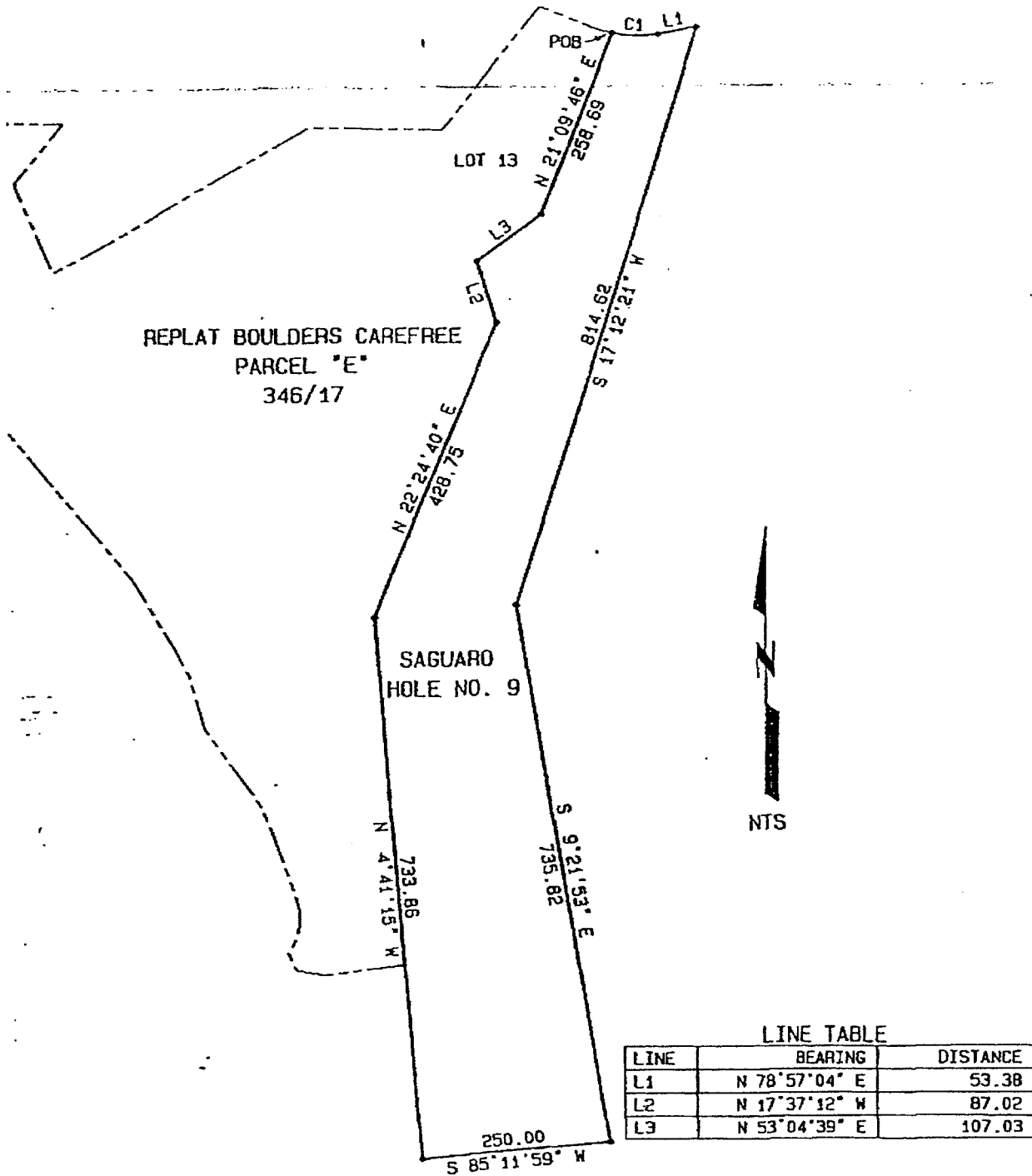
PROPERTY DESCRIPTION
REVISED SAGUARO HOLE NO. 9

That part of the West half of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, bounded on the westerly line by the easterly line of the Replat of Boulders Carefree Parcel "E", a plat recorded in Book 348 of Maps, Page 17, and on the North by the South right-of-way line of Boulder Drive, as recorded in Docket 16407, Page 113, records of Maricopa County, Arizona, and being more particularly described as follows:

BEGINNING at the Northeast corner of Lot 13 of said plat, said point also lying on said South right-of-way line, said point also lying on a curve, the radius of which bears North 13 degrees 35 minutes 40 seconds East a distance of 145.00 feet therefrom; thence easterly along said right-of-way and the arc of said curve through a central angle of 24 degrees 38 minutes 32 seconds a distance of 62.36 feet to a point of tangency; thence North 78 degrees 57 minutes 04 seconds East continuing along said right-of-way a distance of 53.38 feet; thence South 17 degrees 12 minutes 21 seconds West 814.62 feet; thence South 09 degrees 21 minutes 53 seconds East 735.82 feet; thence South 85 degrees 11 minutes 59 seconds West 250.00 feet; thence North 04 degrees 41 minutes 15 seconds West along the easterly line of said plat and the southerly prolongation thereof, a distance of 733.86 feet; thence North 22 degrees 24 minutes 40 seconds East continuing along said easterly line 428.75 feet; thence North 17 degrees 37 minutes 12 seconds West continuing along said easterly line 87.02 feet; thence North 53 degrees 04 minutes 39 seconds East continuing along said easterly line 107.03 feet; thence North 21 degrees 09 minutes 46 seconds East continuing along said easterly line 258.69 feet to the POINT OF BEGINNING.

Said parcel contains 278,778 square feet or 6.3999 acres more or less.

PROPERTY DESCRIPTION SKETCH REVISED SAGUARO HOLE NO. 9



LINE TABLE

LINE	BEARING	DISTANCE
L1	N 78°57'04" E	53.38
L2	N 17°37'12" W	87.02
L3	N 53°04'39" E	107.03

CURVE TABLE

CURVE	ARC	DELTA	RADIUS
C1	62.36	24°38'32"	145.00

GILBERTSON ASSOCIATES
#49027 10-29-91



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

EXHIBIT "A"

88 245497

Job No. 216-13-TM-43
Revised April 13, 1988
W.L.C.

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 1

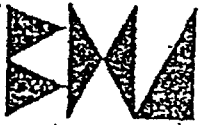
That portion of the Southeast One Quarter (SE 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the East One Quarter (E 1/4) corner of said Section 2;
thence South 42° 23' 10" West, 1,358.08 feet to THE TRUE POINT OF BEGINNING;
thence South 10° 49' 57" East, 120.00 feet;
thence North 81° 19' 11" West, 34.38 feet;
thence North 70° 58' 42" West, 48.43 feet;
thence South 50° 33' 07" West, 318.28 feet;
thence South 59° 51' 19" West, 135.00 feet;
thence South 52° 01' 39" West, 163.65 feet;
thence South 40° 07' 06" West, 76.13 feet;
thence North 90° 00' 00" West, 570.33 feet;
thence North 83° 13' 48" West, 116.36 feet;
thence South 15° 13' 08" West, 34.52 feet; to a point on a non-tangent curve concave to the Southeast having a radius of 45.00 feet, the radial to said point bearing North 83° 02' 29" East;
thence Southwesterly along said curve through a central angle of 100° 59' 48" an arc distance of 79.32 feet;
thence North 83° 13' 48" West, 335.60 feet;
thence North 09° 30' 00" East, 123.08 feet;
thence North 79° 45' 09" East, 747.91 feet;
thence North 65° 23' 07" East, 200.00 feet to the beginning of a curve concave to the Northwest having a radius of 580.75 feet;
thence Northeasterly along said curve through a central angle of 01° 34' 43", an arc distance of 16.00 feet to the point of tangency;
thence North 63° 48' 24" East, 187.00 feet;
thence North 26° 11' 36" West, 30.00 feet;
thence North 87° 00' 17" East, 462.44 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 397,038.69 square feet, 9.1148 Acres, more or less.



5246 South 40th Street
Phoenix, Arizona 85040
(602) 437-3733



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 3

That portion of the East one-half (E 1/2) of Section 2,
Township 5 North, Range 4 East of the Gila and Salt River
Base and Meridian, in Maricopa County, Arizona described as
follows:

Commencing at the Center corner of said Section 2;

thence South 89° 03' 00" East, 126.01 feet to THE TRUE
POINT OF BEGINNING;

thence North 00° 30' 42" West, 56.22 feet to the
beginning of a curve concave to the Southeast, having a
radius of 12.00 feet;

thence Northeasterly along said curve through a central
angle of 87° 21' 49", an arc distance of 18.30 feet to the
point of reverse curvature of a curve concave to the North,
having a radius of 575.00 feet;

thence Easterly along said curve through a central
angle of 09° 28' 38", an arc distance of 95.11 feet;

thence on a non-tangent line South 23° 25' 37" East,
116.20 feet;

thence South 89° 03' 00" East, 101.01 feet;

thence North 23° 25' 37" West, 25.00 feet;

thence South 89° 03' 00" East, 1,579.34 feet;

thence South 43° 30' 23" West, 266.52 feet;

thence South 63° 30' 48" West, 108.00 feet;

thence South 74° 35' 51" West, 209.25 feet;

thence South 89° 07' 25" West, 1,032.26 feet;

thence South 88° 29' 14" West, 140.47 feet;

thence North 42° 51' 26" West, 116.58 feet;

thence South 67° 18' 29" West, 112.92 feet;

thence North 05° 29' 50" East, 121.80 feet;

thence North 75° 12' 33" East, 156.28 feet;

thence NORTH 99.89 feet;

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Legal Description
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thence North 23° 25' 37" West, 45.44 feet;
thence North 89° 03' 00" West, 128.12 feet to THE TRUE
POINT OF BEGINNING.

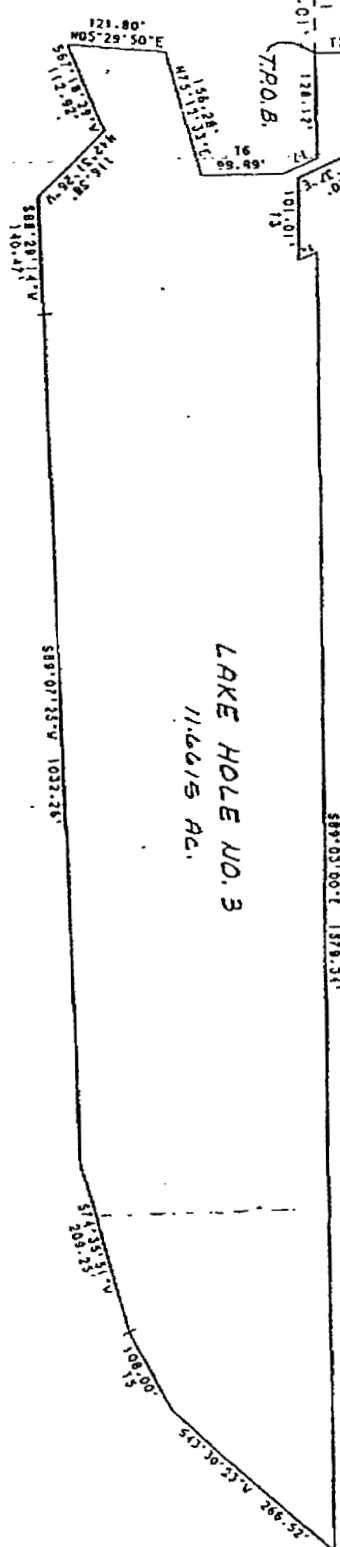
The herein described Golf Course parcel contains 507,977
square feet, 11.6615 Acres, more or less.



P.O.B.
Center, Sec. 2, T5N, R4E

N00°43'58"E ~ 2636.45'

S 1/4 Cor.



NO.	DELTA	RADIUS	LENGTH
C1	87°21'49"	12.00'	18.30'
C2	9°28'38"	573.00'	93.11'

NO.	BEARING	DISTANCE
1	58°03'00"E	126.01'
2	M05°29'50"E	35.22'
3	88°10'03"E	101.01'
4	88°10'03"E	25.00'
5	88°10'03"E	108.00'
6	M05°29'50"E	89.89'
7	M05°29'50"E	43.44'

N.T.S.

210-01-TM-45 OCT. 30, 1986



LOOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

---LEGAL DESCRIPTION---
OF
LAKE 9 GOLF COURSE
HOLE NO. 4

That portion of the Northeast one-quarter (NE 1/4) of
Section 2, Township 5 North, Range 4 East of the Gila and
Salt River Base and Meridian, in Maricopa County, Arizona
described as follows:

Commencing at the Northeast one-quarter (NE 1/4) corner of
said Section 2;

thence South $29^{\circ} 39' 21''$ West, 1,142.78 feet to THE
TRUE POINT OF BEGINNING;

thence SOUTH 721.59 feet;

thence South $05^{\circ} 30' 08''$ West, 76.82 feet;

thence South $81^{\circ} 00' 00''$ East, 7.46 feet;

thence SOUTH 635.44 feet to the beginning of a
non-tangent curve concave to the Northwest, having a radius
of 185.00 feet, and a radial bearing to said beginning of
South $18^{\circ} 05' 47''$ East;

thence Southwesterly along said curve through a central
angle of $02^{\circ} 35' 40''$, an arc distance of 8.38 feet;

thence on a non-tangent line, North $15^{\circ} 07' 04''$ West,
1,661.06 feet to the beginning of a non-tangent curve
concave to the South, having a radius of 225.00 feet, and a
radial bearing to said beginning North $15^{\circ} 07' 04''$ West;

thence Easterly along said curve through a central
angle of $35^{\circ} 23' 27''$, an arc distance of 138.98 feet to the
point of reverse curvature of a curve concave to the North,
having a radius of 275.00 feet;

thence Easterly along said curve through a central
angle of $47^{\circ} 51' 46''$, an arc distance of 229.72 feet to the
point of a cusp;

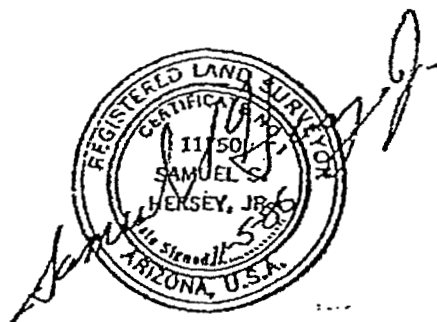
5246 South 40th Street
Phoenix, Arizona 85040
(602) 437-3733

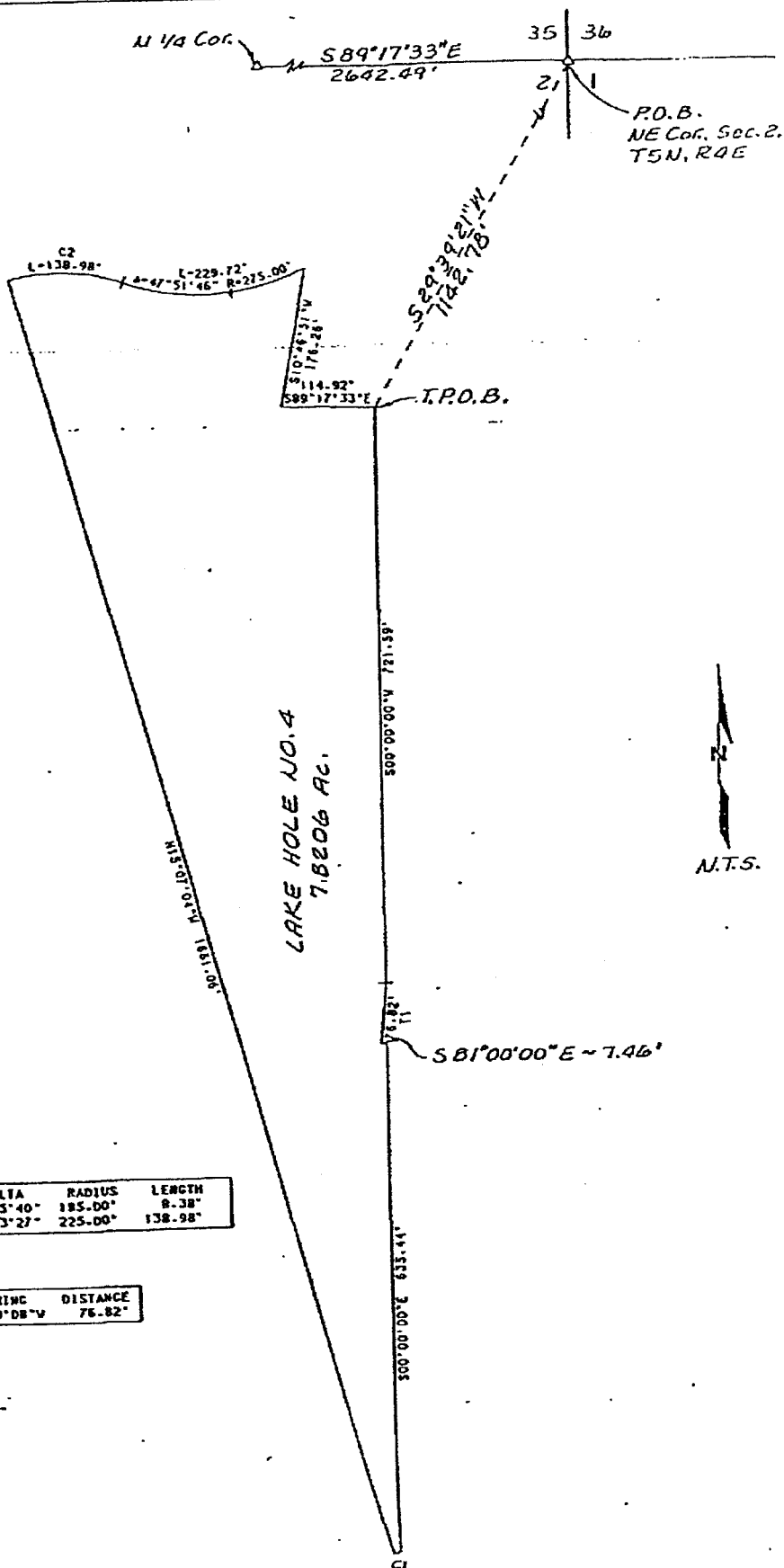
Legal Description
Lake 9, Hole 4
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Oct. 30, 1986
J.S.

thence on a non-tangent line, South $10^{\circ} 46' 51''$ West,
176.26 feet;
thence South $89^{\circ} 17' 33''$ East, 114.92 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 340,665
square feet, 7.8206 Acres, more or less.





NO.	DELTA	RADIUS	LENGTH
C1	2°35'40"	185.00'	8.38"
C2	35°23'27"	225.00'	138.98"

NO.	BEARING	DISTANCE
T1	S05°30'08"W	76.82'

216-01-TM-45 OCT. 30, 1986



ROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 5

That portion of the Northeast one-quarter (NE 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Northeast corner of said Section 2;
thence South $56^{\circ} 25' 27''$ West, 843.27 feet to THE TRUE
POINT OF BEGINNING;
thence South $00^{\circ} 42' 05''$ West, 125.00 feet;
thence South $57^{\circ} 34' 34''$ West, 170.00 feet;
thence South $15^{\circ} 31' 32''$ West, 100.00 feet to the
beginning of a non-tangent curve concave to the South
having a radius of 275.00 feet and a radial bearing to said
beginning of North $15^{\circ} 31' 36''$ East;
thence Westerly along said curve through a central
angle of $50^{\circ} 25' 36''$, an arc distance of 242.03 feet to the
point of tangency;
thence South $55^{\circ} 06' 00''$ West, 90.00 feet to the
beginning of a curve concave to the Northwest having a
radius of 225.00 feet;
thence Southwesterly along said curve through a central
angle of $12^{\circ} 45' 00''$, an arc distance of 50.07 feet to the
point of tangency;
thence South $67^{\circ} 51' 00''$ West, 91.00 feet to the
beginning of a curve concave to the Southeast, having a
radius of 275.00 feet;
thence Southwesterly along said curve through a central
angle of $08^{\circ} 12' 57''$, an arc distance of 39.43 feet;
thence on a non-tangent line North $30^{\circ} 21' 57''$ West,
299.57 feet;
thence North $78^{\circ} 04' 26''$ West, 310.04 feet;
thence North $89^{\circ} 17' 33''$ West, 158.00 feet;
thence North $23^{\circ} 14' 59''$ West, 49.22 feet;

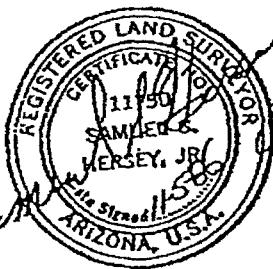
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Phoenix Arizona 85040
(602) 437-3733

Legal Description
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J.S.

thence South $89^{\circ} 17' 33''$ East, 1,070.85 feet;
thence North $00^{\circ} 42' 05''$ East, 125.00 feet;
thence South $89^{\circ} 17' 33''$ East, 200.00 feet to THE TRUE
POINT OF BEGINNING.

The herein-described Golf-Course parcel contains 217,776
square feet, 4.9994 Acres, more or less.





BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 6

That portion of the Northeast one-quarter (NE 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the East one-quarter (E 1/4) corner of said Section 2;

thence North 89° 03' 00" West, 659.73 feet to THE TRUE POINT OF BEGINNING;

thence continuing North 89° 03' 00" West, 373.64 feet;

thence North 00° 43' 12" East, 896.30 feet;

thence North 18° 12' 39" West, 499.65 feet;

thence North 88° 28' 39" West, 220.00 feet;

thence North 01° 31' 21" East, 65.00 feet to the beginning of a curve concave to the Southeast having a radius of 225.00 feet;

thence Northeasterly along said curve through a central angle of 66° 19' 39", an arc distance of 260.47 feet to the point of tangency;

thence North 67° 51' 00" East, 91.00 feet to the beginning of a curve concave to the Northwest, having a radius of 275.00 feet;

thence Northeasterly along said curve through a central angle of 12° 45' 00", an arc distance of 62.20 feet to the point of tangency;

thence North 55° 06' 00" East, 90.00 feet to the beginning of a curve concave to the Southeast, having a radius of 225.00 feet;

thence Northeasterly along said curve through a central angle of 19° 46' 56", an arc distance of 77.68 feet;

thence on a non-tangent line, South 15° 07' 04" East, 1,661.06 feet to the beginning of a non-tangent curve concave to the Southeast, having a radius of 161.64 feet, and a radial bearing to said beginning of North 15° 30' 08" West;

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Legal Description
Lake 9, Hole No. 6
Page 2

216-01-TM-45
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thence Southwesterly along said curve through a central angle of $35^{\circ} 54' 52''$, an arc distance of 101.32 feet;

thence on a non-tangent line, North $38^{\circ} 14' 47''$ West, 77.67 feet;

thence North $80^{\circ} 07' 11''$ East, 24.23 feet;

thence North $34^{\circ} 39' 56''$ West, 140.53 feet;

thence South $48^{\circ} 07' 59''$ West, 95.38 feet;

thence South $44^{\circ} 00' 31''$ East, 92.71 feet;

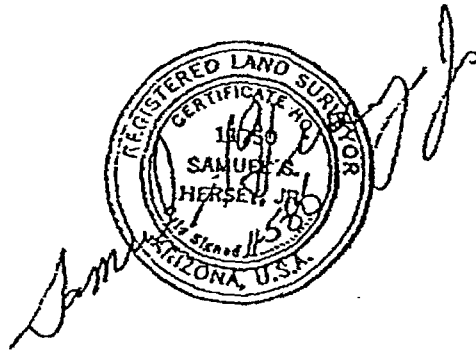
thence North $84^{\circ} 33' 40''$ East, 40.95 feet;

thence South $35^{\circ} 54' 15''$ East, 94.16 feet to the beginning of a non-tangent curve concave to the Southeast, having a radius of 161.64 feet, and a radial bearing to said beginning of North $60^{\circ} 48' 57''$ West;

thence Southwesterly along said curve through a central angle of $29^{\circ} 11' 03''$, an arc distance of 82.33 feet to the point of tangency;

thence SOUTH 38.60 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 634,346 square feet, 14.5626 Acres, more or less.





BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

216-23-TM-05
Revised February 2, 1990
W.L.C.

90 192807

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 7

That portion of the East On-Half (E 1/2) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the East One-Quarter (E 1/4) corner of said Section 2;

thence South 17° 35' 30" West, 1,132.82 feet to THE TRUE POINT OF BEGINNING;

thence North 89° 11' 59" West, 248.32 feet;

thence North 10° 49' 57" West, 322.73 feet;

thence North 03° 45' 39" East, 360.00 feet;

thence North 73° 15' 06" West, 133.50 feet;

thence North 29° 11' 56" East, 202.10 feet to the beginning of a curve concave to the Northwest, having a radius of 215.00 feet;

thence Northeasterly along said curve through a central angle of 29° 11' 56", an arc distance of 109.57 feet to the point of tangency;

thence North 90.84 feet;

thence North 89° 03' 00" West, 30.00 feet;

thence North 38.60 feet to the beginning of a curve concave to the Southeast, having a radius of 161.64 feet;

thence Northeasterly along said curve through a central angle of 74° 29' 52", an arc distance of 210.17 feet to the point of reverse curvature of a curve concave to the Northwest, having a radius of 185.00 feet;

thence Northeasterly along said curve through a central angle of 02° 35' 40", an arc distance of 8.38 feet;

thence on a non-tangent line South 31.33 feet to the beginning of a non-tangent curve concave to the Northwest, having a radius of 215.00 feet and a radial bearing to said beginning of South 15° 30' 09" East;

thence Northeasterly along said curve through a central angle of 29° 42' 50", an arc distance of 111.50 feet to the point of cusp;

thence on a non-tangent line South 19° 18' 17" West, 98.01 feet;

thence South 60° 41' 47" East, 56.05 feet;

thence South 16° 52' 20" East, 397.48 feet;

thence North 52° 34' 37" East, 149.51 feet;

thence North 40° 52' 58" East, 125.89 feet to a point on a non-tangent curve concave to the Southwest, having a radius of 532.00 feet, a radial to said point bearing North 68° 11' 08" East;

thence Southeasterly along said curve through a central angle of 08° 25' 54" an arc distance of 78.29 feet;

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90 192807

thence South 54° 04' 58" West, 270.39 feet;
thence South 00° 00' 00" East, 271.74 feet;
thence South 12° 00' 44" West, 139.03 feet;
thence South 29° 28' 26" West, 53.00 feet;
thence South 57° 24' 55" East, 94.00 feet;
thence North 79° 53' 31" East, 80.09 feet;
thence North 71° 40' 43" East, 90.00 feet;
thence South 07° 21' 57" West, 15.72 feet to the beginning of a tangent curve
concave to the Southeast having a radius of 1,978.00 feet,
thence Southwesterly along said curve through a central angle of 01° 06' 02" an arc
distance of 37.99 feet;
thence South 69° 13' 36" West, 192.35 feet;
thence South 11° 40' 03" West, 116.36 feet;
thence South 17° 04' 56" West, 69.98 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 409,900 square feet, 9.4100 acres, more
or less.





BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

216-23-TM-005
Revised Feb. 2, 1990
W.L.C.

90 192807

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 8

That portion of the Southeast One-Quarter (SE 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the East One-Quarter (E 1/4) corner of said Section 2;

thence South 17° 35' 30" West, 1,132.82 feet to THE TRUE POINT OF BEGINNING;

thence South 17° 04' 56" West, 160.53 feet;

thence South 37° 48' 00" West, 626.54 feet;

thence South 58° 27' 21" West, 278.47 feet;

thence South 14° 36' 21" East, 205.77 feet;

thence South 40° 41' 52" East, 79.34 feet;

thence South 43° 36' 31" West, 39.68 feet to the beginning of a tangent curve concave to the North having a radius of 23.00 feet;

thence Westerly along said curve through a central angle of 96° 08' 42" an arc distance of 38.60 feet;

thence North 40° 14' 47" West, 71.04 feet;

thence North 20° 57' 08" East, 72.94 feet;

thence North 14° 36' 21" West, 158.84 feet;

thence North 68° 45' 00" West, 107.00 feet;

thence North 30° 40' 00" West, 146.99 feet;

thence South 61° 30' 00" West, 100.65 feet;

thence South 29° 44' 30" West, 85.32 feet;

thence South 84° 27' 34" West, 20.01 feet;

thence North 05° 21' 00" East, 130.86 feet;

thence North 58° 43' 52" East, 609.99 feet;

thence North 44° 50' 59" East, 154.03 feet;

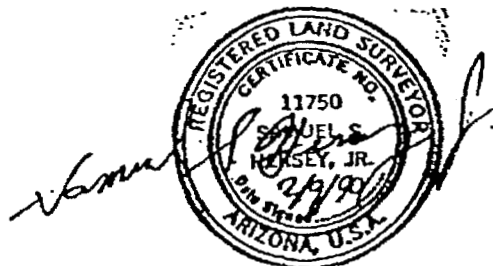
thence North 58° 47' 38" East, 104.98 feet;

thence North 20° 58' 41" East, 103.35 feet;

thence North 10° 49' 57" West, 65.00 feet;

thence South 89° 11' 59" East, 248.32 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 277,854 square feet, 6.3787 Acres, more or less.



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BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

90 192807

216-23-TM-005
Revised February 2, 1990
W.L.C.

LEGAL DESCRIPTION
OF
LAKE 9 GOLF COURSE
HOLE NO. 9

That portion of the Southeast One-Quarter (SE 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the South One-Quarter (S 1/4) corner of said Section 2;
thence North 20° 39' 22" East, 632.04 feet to THE TRUE POINT OF BEGINNING;
thence North 22° 33' 27" West, 269.98 feet;
thence North 67° 26' 33" East, 182.91 feet to the Southwest corner of the Replat of Boulders Carefree Unit Eight as recorded in Book 331, Page 22 of the Maricopa County Records Office, said corner being the beginning of a non-tangent curve concave to the Southwest, having a radius of 300.00 feet, and a radial bearing to said beginning of North 21° 33' 13" East;
thence Southeasterly along the Southwest line of said subdivision and curve through a central angle of 16° 26' 26", an arc distance of 86.08 feet to the point of tangency;
thence South 52° 00' 22" East, 494.07 feet;
thence South 69° 24' 13" East, 150.26 feet;
thence North 82° 04' 30" East, 140.51 feet;
thence North 77° 10' 39" East, 172.33 feet to the Southeast corner of Lot 2046 of said Replat of Boulders Carefree Unit Eight subdivision and a corner in the West line of Lot 22 of Replat, Boulders Carefree Unit Seven subdivision as recorded in Book ___, Page ___ of the Maricopa County Records Office;
thence with the West and South lines of said Unit Seven subdivision South 23° 33' 38" East, 98.93 feet;
thence North 83° 24' 50" East, 201.31 feet;
thence South 40° 14' 47" East, 62.74 feet;
thence South 49° 15' 22" East, 50.12 feet;
thence South 72° 59' 37" East, 98.36 feet;
thence North 49° 54' 34" East, 78.26 feet;
thence South 40° 14' 47" East, 55.73 feet to the beginning of a tangent curve concave to the West, having a radius of 23.00 feet;
thence Southerly along said curve through a central angle of 83° 51' 18" an arc distance of 33.66 feet;
thence South 43° 36' 31" West 63.47 feet;
thence North 46° 56' 36" West 58.65 feet;
thence North 76° 32' 47" West 148.13 feet;

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90 192807

thence South 58° 24' 13" West, 75.00 feet to the Northwest corner of Lot 24 of said Unit Seven subdivision;

thence leaving said Unit Seven subdivision and continuing South 58° 24' 13" West, 116.69 feet;

thence North 82° 22' 29" West, 139.03 feet;

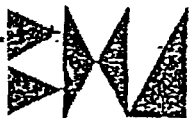
thence South 76° 42' 02" West, 245.00 feet;

thence North 86° 04' 42" West, 364.90 feet;

thence North 47° 39' 55" West, 447.49 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Parcel contains 381,903 square feet, 8.7673 Acres, more or less.





BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

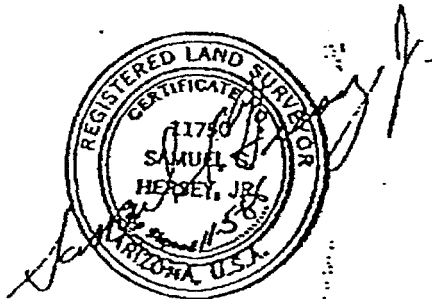
Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
THE
DRIVING RANGE

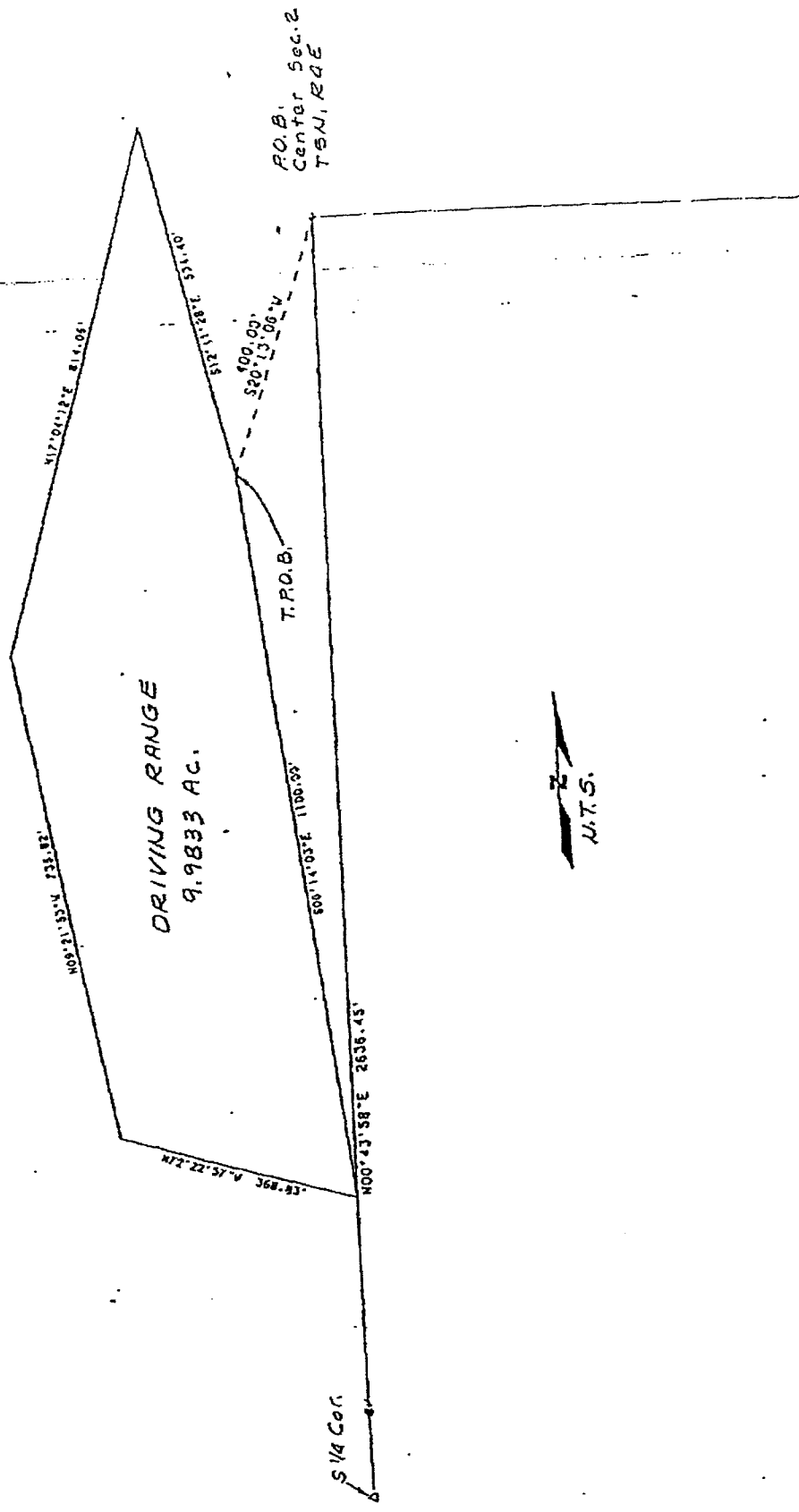
That portion of the West one-half (W 1/2) of Section 2,
Township 5 North, Range 4 East of the Gila and Salt River
Base and Meridian, in Maricopa County, Arizona described as
follows:

Commencing at the Center corner of said Section 2;
thence South 20° 13' 06" West, 400.00 feet to THE TRUE
POINT OF BEGINNING;
thence South 06° 14' 03" East, 1,100.00 feet;
thence North 72° 22' 57" West, 368.83 feet;
thence North 09° 21' 53" West, 735.82 feet;
thence North 17° 04' 12" East, 814.06 feet to a point
on the South right-of-way line of Boulders Drive as
recorded in Docket 16407, Page 113, M.C.R. Office;
thence departing said right-of-way line South 12° 11'
28" East, 534.40 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 434,874
square feet, 9.9833 Acres, more or less.



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P16-N1-TM-65 OCT. 30. 1986

EXHIBIT C1

This exhibit is prepared for the purpose of determining the RWDS contribution as stated in City of Scottsdale Agreement No. 900083.

I. Calculation of RWDS Costs:

a. Central Arizona Project/Turnout Structure(1)	\$	45,670
b. Landscape Contract(1)		103,301
c. Telemetry System fees(2)		25,000
d. Design and Administration fees(1)		1,374,392
e. Construction Management fees (Greiner Engr.)(1)		623,372
f. Construction Consulting fees (NBS/Lowry Engr.)(3)		303,900
g. City of Scottsdale Plan Review fees(1)		9,765
h. Mollusks screens and chlorination costs(4)		0
i. Right of Way Acquisitions(5)		544,875
j. Pipeline and Pump Station Costs		10,452,215
k. City Payback Admin Fees		10,000
l. Minus line valves at Pump Station A= \$		(16,000)
m. City Plan & Specs Repro Costs, Out Legal Fees		10,000
n. TOTAL RWDS COSTS	\$	13,486,490

II. Calculation of RWDS Hookup Fee:

	Cost	MGD	Cost Per MGD	
Total Cost of RWDS	\$13,486,490	20.0	\$674,325	
Investment by DMP	\$4,311,648	4.0	\$1,077,912	
Investment by Others	\$3,819,760	5.5	\$694,502	
Average	\$21,617,898	29.5	\$732,810	1993 RWDS HOOKUP FEE
Adjusted to 1994 costs:	(\$732,810x1.02)	x 1.11	= \$829,687	1994 RWDS HOOKUP FEE

III. Calculation of Additional Pumps Fee:

Pump Fee Equal To:	Est Cost of Add'l Pumps	\$404,400	
	-----	=	-----
	Remaining RWDS Capacity		8.5 MGD
			\$47,576 PER MGD
Adjusted to 1993 Costs:	ENR Index = 1.042 x \$47,576 =	\$49,574	
Adjusted to 1994 Costs:	ENR Index = 1.02 x \$49,574 =	\$50,564	

IV. Total Cost For 1994 RWDS Agreements:

	=	RWDS Hookup Fee + Additional Pumps Fee
	=	\$829,687 + \$50,564
	=	\$880,251
Boulders 750,000 gpd	=	0.75 x \$880,251= \$ 660,188.25

NOTES:

- (1) Based on actual costs incurred
 - (2) Based on bid amount plus \$15,000 for City staff work
 - (3) Based on bid amount of approved contract
 - (4) Included in (j) pump station costs
 - (5) Includes cost for land to be purchased from Bureau of Rec. Est. to be \$500,000
- (REV. 12/10/93)

RESOLUTION NO. 4142

A RESOLUTION OF THE CITY OF SCOTTSDALE,
MARICOPA COUNTY, ARIZONA, AUTHORIZING
THE MAYOR TO ENTER INTO AGREEMENT NO.
920004A FIRST AMENDMENT WITH BOULDERS
JOINT VENTURE RESERVING CAPACITY IN THE
RECLAIMED WATER DISTRIBUTION SYSTEM
PIPELINE FOR A CERTAIN GOLF COURSE.

WHEREAS, on February 12, 1991, the City Council authorized the construction of a new Reclaimed Water Distribution System (RWDS) to transport raw CAP water and reclaimed wastewater from a water reclamation plant to golf courses in the north area of the City for irrigation of the golf courses; and

WHEREAS, Pipeline Capacity Agreements are being used to enable the north area golf courses to participate financially in the design and construction of the RWDS and to enable them to reserve capacity in the system; and

WHEREAS, the City has reached agreement on the terms of the future delivery of reclaimed wastewater and raw CAP water in a Pipeline Capacity Agreement with Boulders Joint Venture; and

WHEREAS, it is in the interest of the citizens of the City of Scottsdale that the north area golf courses use raw CAP water and reclaimed wastewater to irrigate golf courses instead of groundwater.

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That Herbert R. Drinkwater, Mayor, is hereby authorized to execute on behalf of the City of Scottsdale Agreement No. 920004A providing for a Pipeline Capacity Agreement with Boulders Joint Venture reserving capacity in the Reclaimed Water Distribution System.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 19th day of December, 1994.

CITY OF SCOTTSDALE, a municipal
corporation

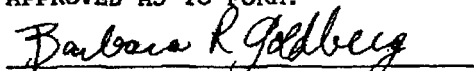
By:


Herbert R. Drinkwater, Mayor

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:


for Fredda J. Bisman, City Attorney



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
Rev. January 7, 1987
J.S.

LEGAL DESCRIPTION
OF
BOULDERS 9 GOLF COURSE

HOLE NO. *#17 South Course*

That portion of the North one-half (N 1/2) of Section 11, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 11;

thence South 04° 56' 31" East, 1,200.38 feet to THE TRUE POINT OF BEGINNING;

thence North 66° 20' 13" West, 249.88 feet to the beginning of a curve concave to the Northeast, having a radius of 150.00 feet;

thence Northwesterly along said curve through a central angle of 36° 12' 31", an arc distance of 94.79 feet;

thence on a non-tangent line, North 35° 29' 19" East, 273.24 feet to the beginning of a non-tangent curve concave to the Southwest, having a radius of 150.00 feet and a radial bearing to said beginning of North 11° 06' 20" East;

thence Southeasterly along said curve through a central angle of 11° 14' 54", an arc distance of 29.45 feet to the point of tangency;

thence South 67° 38' 47" East, 102.58 feet;

thence North 02° 24' 08" East, 59.85 feet;

thence North 75° 39' 22" East, 91.14 feet;

thence South 01° 20' 00" East, 120.90 feet;

thence South 67° 38' 47" East, 60.17 feet;

thence South 21° 05' 50" East, 64.27 feet;

thence South 74° 34' 40" East, 264.95 feet;

thence South 60° 40' 57" East, 96.42 feet;

thence South 68° 50' 16" East, 248.51 feet;

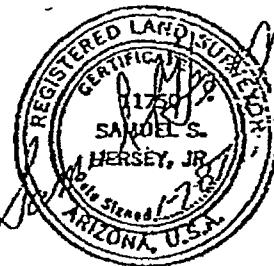
thence South 42° 24' 16" East, 112.41 feet;

thence South 60° 40' 57" East, 242.35 feet to the beginning of a curve concave to the Southwest, having a radius of 75.00 feet;

thence Southeasterly along said curve through a central angle of 95° 10' 08", an arc distance of 124.58 feet;

thence on a non-tangent line, North 73° 51' 07" West, 1,081.77 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 317,631 square feet, 7.2918 Acres, more or less.

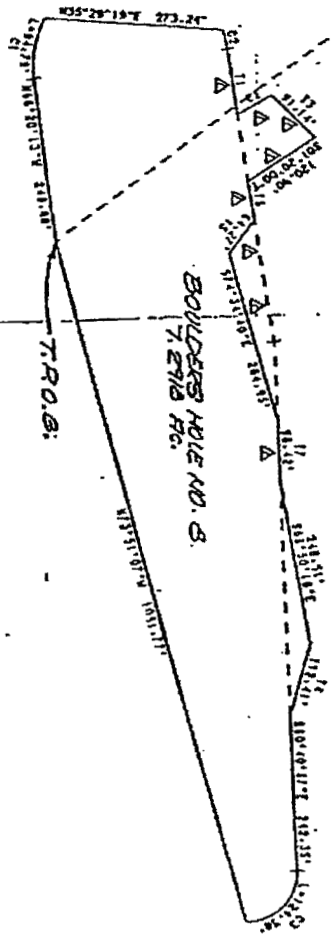


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(602) 437-3733

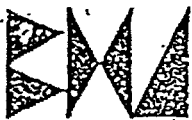
14.7:5.

NO.	OLITA	RADIUS	LENGTH
C1	38.13.51.	150.00.	94.7.
C2	11.14.34.	150.00.	28.48.
C3	41.10.02.	150.00.	124.58.

NO.	STARING	DISTANCE
1	86.1 JR. 0.7 E	102.58
2	MO 2.1 0.8 E	59.05
3	MO 3.9 0.2 E	91.14
4	4.2 2.1 1.6 F	112.41
5	7.1 0.5 1.0 E	66.27
6	5.6 1.7 0.8 E	40.17
7	5.0 1.0 0.7 E	65.42



Δ CHANGED Q.A. BOLDERS G.B. 1-7-87
216-001-TM-OCT 1986



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
BOULDERS 9 GOLF COURSE
HOLE NO. ■

#15 South Course

That portion of the South one-half (S 1/2) of Section 2,
and North one-half (N 1/2) of Section 11, Township 5 North,
Range 4 East of the Gila and Salt River Base and Meridian,
in Maricopa County, Arizona described as follows:

Commencing at the North one-quarter (N 1/4) corner of said
Section 11;

thence South 40° 05' 30" East, 268.59 feet to THE TRUE
POINT OF BEGINNING;

thence South 19° 04' 11" West, 640.73 feet;

thence South 35° 29' 19" West, 273.24 feet to the
beginning of a non-tangent curve concave to the Northeast,
having a radius of 75.00 feet and a radial bearing to said
beginning of South 20° 46' 34" West;

thence Northwesterly along said curve through a central
angle of 73° 41' 28", an arc distance of 96.46 feet to the
point of tangency;

thence North 04° 28' 02" East, 1,708.16 feet;

thence North 67° 26' 33" East, 248.52 feet;

thence South 22° 33' 27" East, 269.98 feet;

thence South 12° 59' 30" West, 217.38 feet;

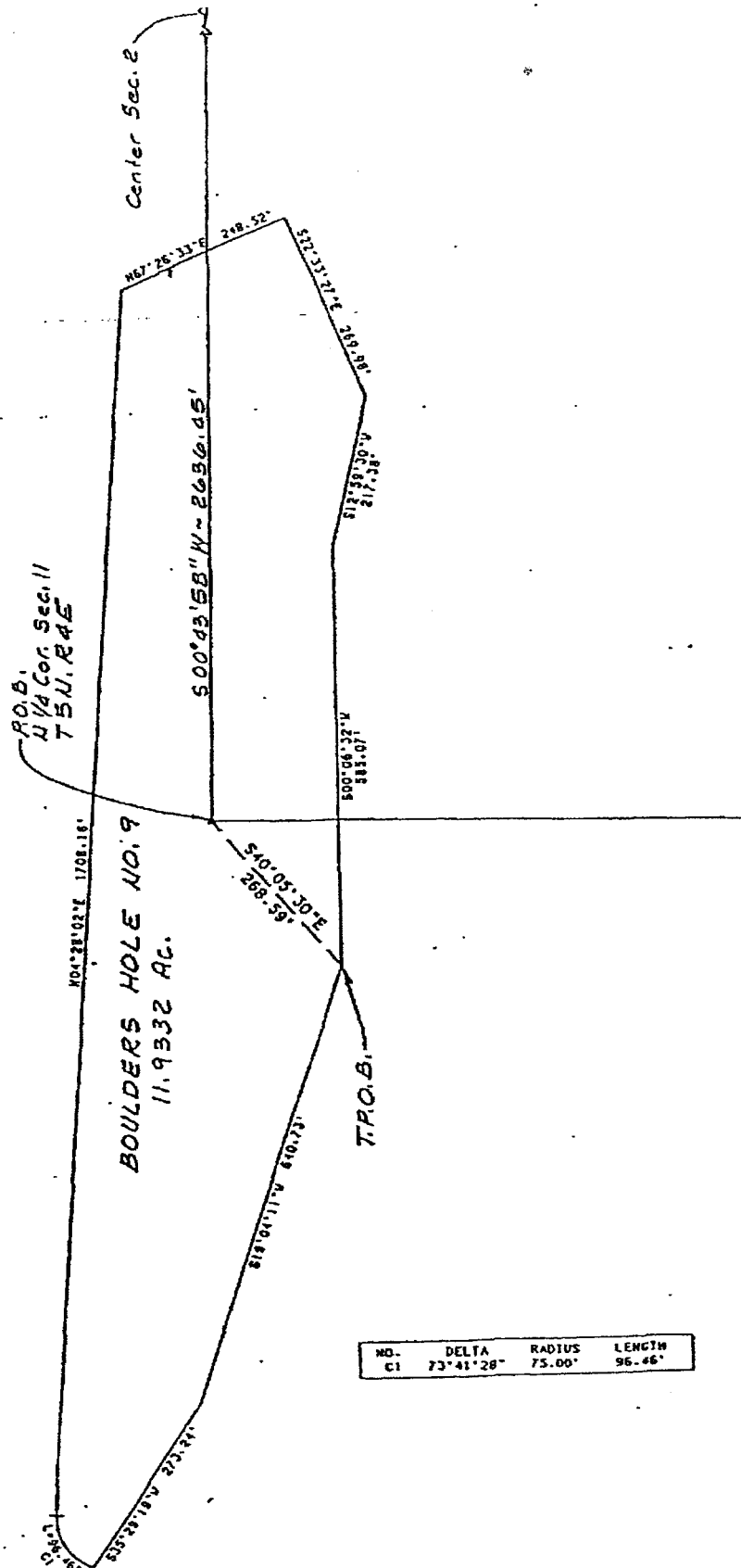
thence South 00° 06' 32" West, 585.07 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 519,810
square feet, 11.9332 Acres, more or less.



5246 South 40th Street
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(602) 437-3733

U.S.S.



NO.	DELTA	RADIUS	LENGTH
C1	73°41'28"	75.00'	96.46'

214-01-TH-45 OCT. 30, 1981



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

90 058657

216-13-TM-108
December 14, 1989
W.L.C.

REVISED
LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 1

That portion of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Center corner of said Section 2;

thence South 20° 13' 06" West, 400.00 feet to THE TRUE POINT OF BEGINNING;

thence North 12° 11' 28" West, 534.40 feet to a point on the South right of way line of Boulders Drive as recorded in Docket 16407, Page 113, M.C.R. Office;

thence North 78° 57' 04" East, 121.04 feet along said right of way line to the beginning of a curve concave to the Southwest, having a radius of 95.00 feet;

thence Southeasterly along said curve through a central angle of 47° 32' 59", an arc distance of 78.84 feet along said right of way line to the point of tangency;

thence South 53° 30' 00" East, 100.05 feet along said right of way line to the beginning of a curve concave to the Northeast, having a radius of 145.00 feet;

thence Southeasterly along said curve through a central angle of 27° 06' 32", an arc distance of 68.61 feet along said right of way line to the point of reverse curvature of a curve concave to the Southwest, having a radius of 12.00 feet;

thence departing said right of way line, Southeasterly along said curve through a central angle of 80° 05' 50", an arc distance of 16.78 feet to the point of tangency;

thence South 00° 30' 42" East, 57.17 feet;

thence North 89° 03' 00" West, 96.00 feet;

thence North 89° 02' 09" West, 66.01 feet;

thence South 35° 01' 31" East, 133.62 feet;

thence South 89° 03' 00" East, 86.28 feet;

thence South 00° 30' 42" East, 2.40 feet to the beginning of a curve concave to the West, having a radius of 185.00 feet;

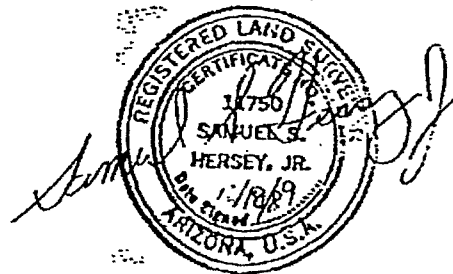
EXHIBIT "C"

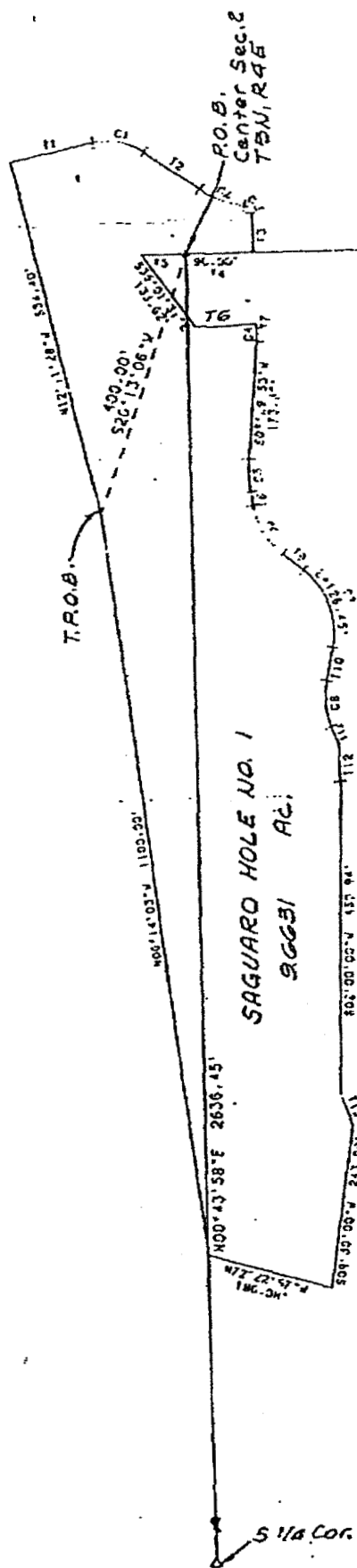
5245 South 40th Street
Phoenix, Arizona 85040
PH (602) 437-3733
FAX (602) 437-3424

90 058657

thence Southerly along said curve through a central angle of $06^{\circ} 00' 32''$,
an arc distance of 19.40 feet to the point of tangency;
thence South $05^{\circ} 29' 53''$ West, 173.35 feet to the beginning of a curve
concave to the East, having a radius of 215.00 feet;
thence Southerly along said curve through a central angle of $13^{\circ} 21' 16''$,
an arc distance of 50.11 feet to the point of tangency;
thence South $07^{\circ} 51' 26''$ East, 20.19 feet to the beginning of a curve
concave to the Northeast, having a radius of 115.00 feet;
thence Southeasterly along said curve through a central angle of $42^{\circ} 32' 17''$,
an arc distance of 85.38 feet to the point of tangency;
thence South $50^{\circ} 23' 43''$ East, 39.15 feet to the beginning of a curve
concave to the Southwest, having a radius of 115.00 feet;
thence Southeasterly along said curve through a central angle of $63^{\circ} 00' 00''$,
an arc distance of 126.45 feet to the point of tangency;
thence South $12^{\circ} 36' 17''$ West, 48.00 feet to the beginning of a curve
concave to the East, having a radius of 115.00 feet;
thence Southerly along said curve through a central angle of $33^{\circ} 45' 00''$,
an arc distance of 67.74 feet to the point of tangency;
thence South $21^{\circ} 08' 43''$ East, 26.50 feet;
thence South $01^{\circ} 10' 07''$ East, 54.86 feet;
thence South $02^{\circ} 00' 00''$ West, 459.94 feet;
thence South $19^{\circ} 20' 00''$ East, 50.00 feet;
thence South $09^{\circ} 30' 00''$ West, 243.08 feet;
thence North $72^{\circ} 22' 57''$ West, 186.08 feet;
thence North $06^{\circ} 14' 03''$ West, 1,100 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Course parcel contains 420,925 square feet, 9.6631
Acres, more or less.

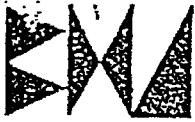




NO.	DELTA	RADIUS	LENGTH
1	47° 32' 56"	95.00'	78.84'
2	27° 06' 32"	145.00'	68.81'
3	86° 05' 20"	12.00'	16.78'
4	6° 00' 32"	185.00'	13.40'
5	13° 21' 16"	215.00'	50.11'
6	42° 52' 17"	115.00'	85.38'
7	63° 00' 00"	115.00'	126.45'
8	33° 45' 00"	115.00'	67.74'

NO.	BEARING	DISTANCE
1	N78° 57' 04" E	129.04'
2	S53° 30' 00" E	100.05'
3	S00° 30' 42" E	57.17'
4	N89° 03' 00" W	96.00'
5	N89° 02' 00" W	66.01'
6	S00° 00' 00" E	06.20'
7	S00° 30' 42" E	2.40'
8	S07° 51' 26" E	20.19'
9	S50° 23' 43" E	39.15'
10	S12° 36' 17" W	48.00'
11	S21° 06' 43" E	26.50'
12	S31° 10' 07" E	54.86'
13	S19° 20' 00" E	50.00'

216-13-TM-103
December 15, 1989



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

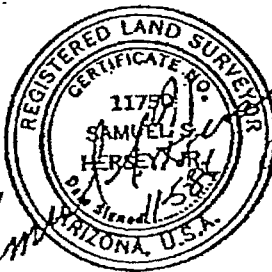
Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 2

That portion of the North one-half (N 1/2) of Section 2,
Township 5 North, Range 4 East of the Gila and Salt River
Base and Meridian, in Maricopa County, Arizona described as
follows:

Commencing at the Center corner of said Section 2;
thence North 21° 48' 49" East, 1,025.26 feet to THE
TRUE POINT OF BEGINNING;
thence South 52° 40' 53" West, 355.68 feet;
thence South 59° 53' 06" West, 103.48 feet;
thence South 36° 09' 30" West, 163.44 feet;
thence South 34° 01' 48" East, 34.91 feet;
thence South 57° 41' 26" West, 130.39 feet;
thence North 43° 24' 16" West, 438.63 feet;
thence North 57° 31' 07" East, 149.55 feet;
thence North 31° 59' 54" East, 30.00 feet;
thence North 44° 07' 13" East, 507.73 feet;
thence South 77° 53' 36" East, 160.97 feet;
thence South 38° 58' 35" East, 330.63 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 318,623
square feet, 7.3146 Acres, more or less.

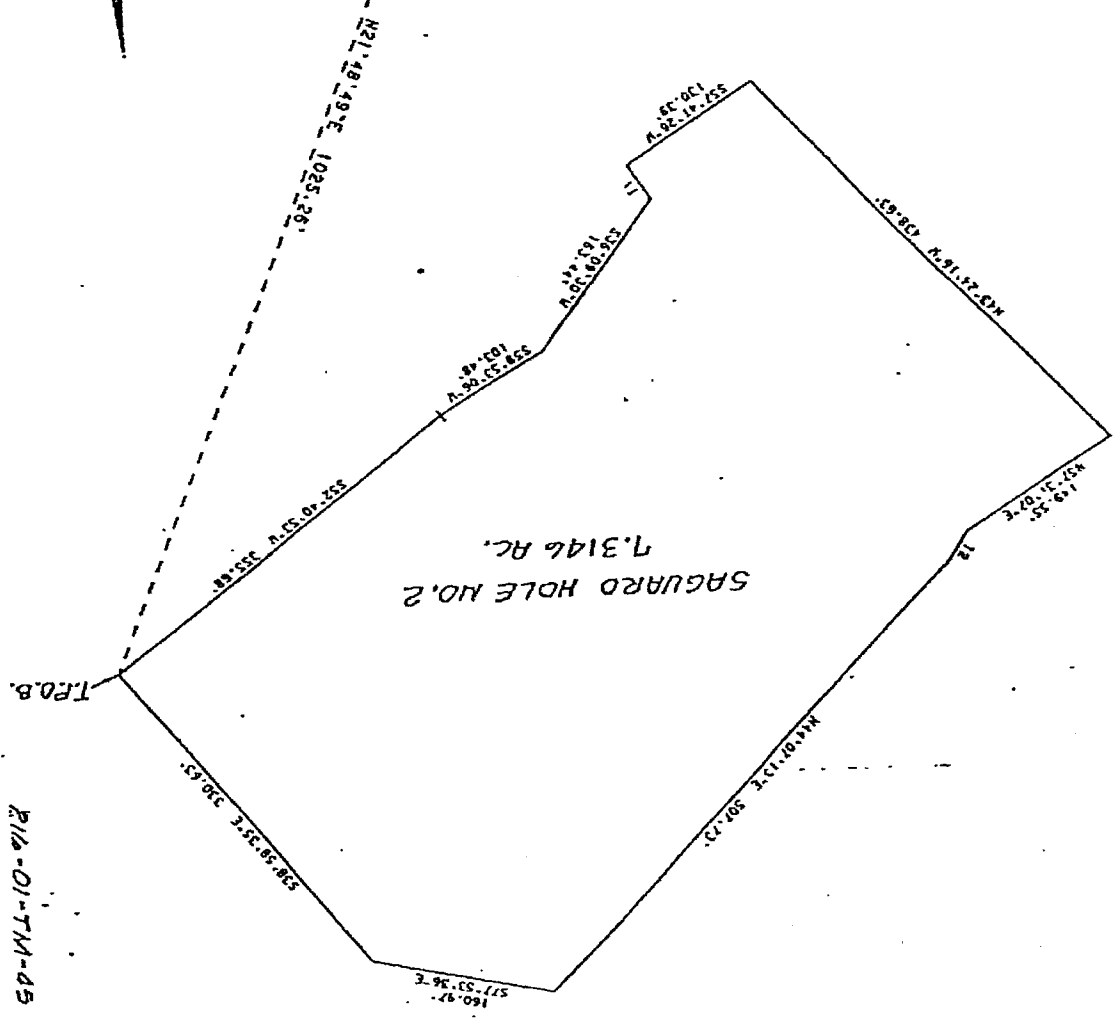


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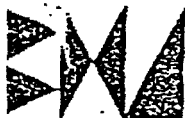
Center, Sec. 2, T5N, R4E
 589°03'00"E ~ 2643.38'
 E 1/4 Cor.
 P.O.B.

SCALE: 1"=100'

NO.	BEARING	DISTANCE
12	M31°39'54"E	30.00'
11	S34°01'48"E	34.96'



R1A-01-TM-45 OCT 30, 1986



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 3

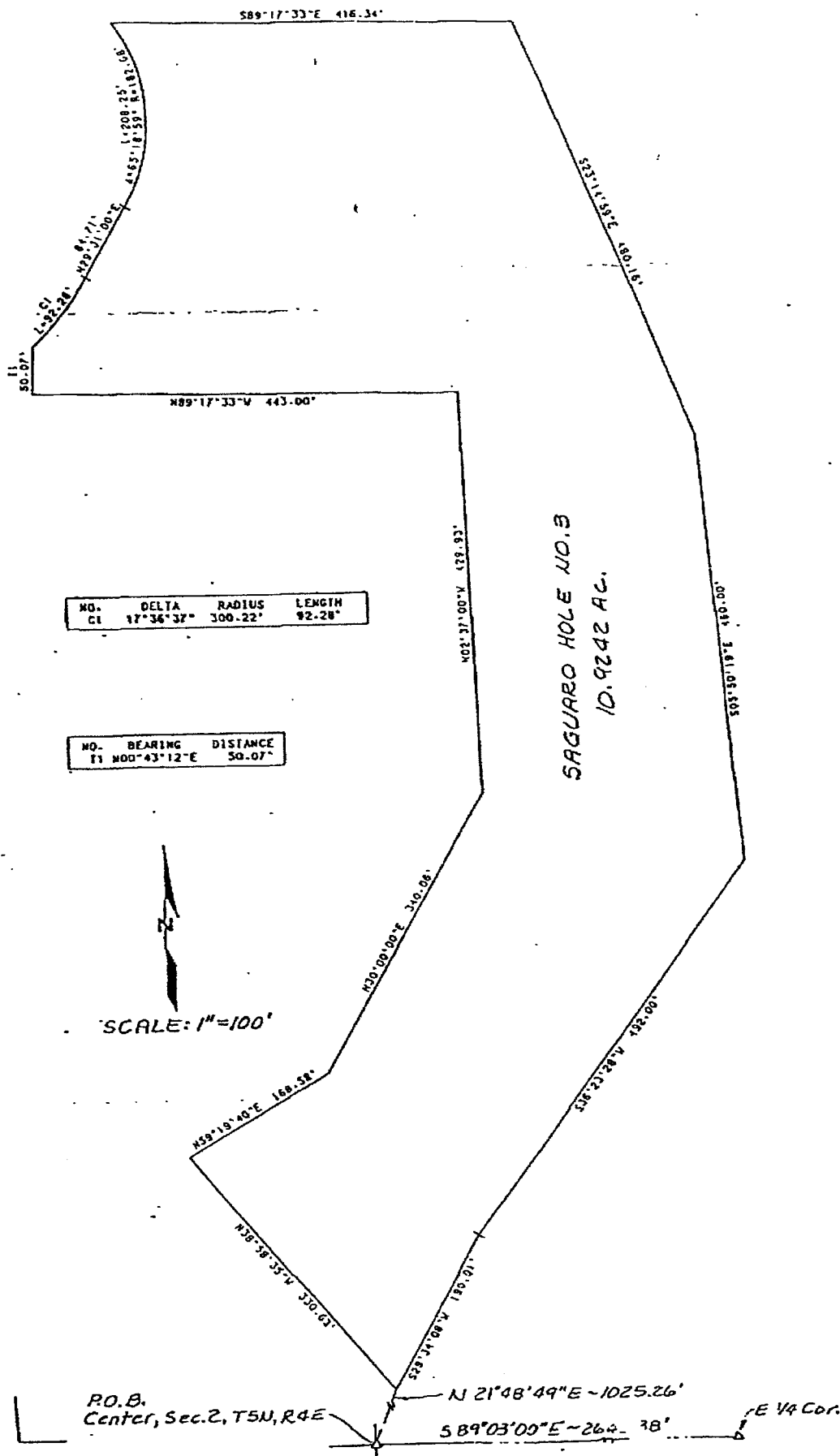
That portion of the Northwest one-quarter (NW 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Center corner of said Section 2;
thence North $21^{\circ} 48' 49''$ East, 1,025.26 feet to THE
TRUE POINT POINT OF BEGINNING;
thence North $38^{\circ} 58' 35''$ West, 330.63 feet;
thence North $59^{\circ} 19' 40''$ East, 168.58 feet;
thence North $30^{\circ} 00' 00''$ East, 340.06 feet;
thence North $02^{\circ} 37' 00''$ West, 429.93 feet;
thence North $89^{\circ} 17' 33''$ West, 443.00 feet;
thence North $00^{\circ} 43' 12''$ East, 50.07 feet to the
beginning of a non-tangent curve concave to the Northwest,
having a radius of 300.22 feet and a radial bearing to said
beginning of South $42^{\circ} 52' 23''$ East;
thence Northeasterly along said curve through a central
angle of $17^{\circ} 36' 37''$, an arc distance of 92.28 feet to the
point of tangency;
thence North $29^{\circ} 31' 00''$ East, 84.71 feet to the
beginning of a curve concave to the West, having a radius
of 182.68 feet;
thence Northerly along said curve through a central
angle of $65^{\circ} 18' 59''$, an arc distance of 208.25 feet;
thence on a non-tangent line, South $89^{\circ} 17' 33''$ East,
416.34 feet;
thence South $23^{\circ} 14' 59''$ East, 480.16 feet;
thence South $05^{\circ} 50' 19''$ East, 460.00 feet;
thence South $36^{\circ} 23' 28''$ West, 492.00 feet;
thence South $29^{\circ} 34' 08''$ West, 190.01 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 475,859
square feet, 10.9242 Acres, more or less.



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216-01-TM-45 OCT. 30, 1986



HOOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 4

That portion of the North one-half (N 1/2) of Section 2,
Township 5 North, Range 4 East of the Gila and Salt River
Base and Meridian, in Maricopa County, Arizona described as
follows:

Commencing at the North one-quarter (N 1/4) corner of said
Section 2;

thence South 79° 43' 04" West, 1,062.37 feet to THE
TRUE POINT OF BEGINNING;

thence South 89° 09' 23" East, 1,046.98 feet to the
beginning of a non-tangent curve concave to the Northeast
having a radius of 185.21 feet and a radial bearing to said
beginning of South 55° 22' 43" West;

thence Southeasterly along said curve through a central
angle of 09° 28' 25", an arc distance of 30.62 feet to the
point of reverse curvature of a curve concave to the
Southwest having a radius of 122.68 feet;

thence Southeasterly along said curve through a central
angle of 73° 36' 43", an arc distance of 157.62 feet to the
point of tangency;

thence South 29° 31' 00" West, 84.71 feet to the
beginning of a curve concave to the Northwest, having a
radius of 240.22 feet;

thence Southwesterly along said curve through a central
angle of 15° 04' 38", an arc distance of 63.21;

thence on a non-tangent line North 22° 28' 39" West,
112.17 feet;

thence South 84° 57' 52" West, 535.46 feet;

thence WEST 280.00 feet;

thence SOUTH 130.00 feet;

thence WEST 34.00 feet;

thence North 18° 08' 51" West, 136.81 feet;

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thence WEST 84.19 feet;
thence South 71° 51' 09" West, 200.00 feet;
thence South 18° 08' 51" East, 174.79 feet;
thence South 44° 17' 34" West, 4.02 feet to the
beginning of a curve concave to the North having a radius
of 20.00 feet;

thence Westerly along said curve through a central
angle of 90° 00' 00", an arc distance of 31.42 feet to the
point of compound curvature of a curve concave to the
Northeast having a radius of 244.92 feet;

thence Northwesterly along said curve through a central
angle of 18° 28' 48", an arc distance of 79.00 feet to the
point of tangency;

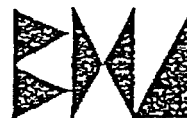
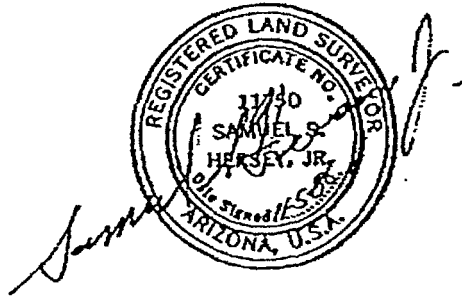
thence North 27° 13' 38" West, 249.93 feet;

thence South 62° 46' 22" West, 30.00 feet;

thence North 22° 18' 12" West, 32.18 feet;

thence North 64° 17' 06" East, 420.17 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course Parcel contains 340,718
square feet, 7.8218 Acres, more or less.



R.O.B. N 1/4 Cor., Sec. 8, T5N, R4E

SCALE: 1"=100'

T.R.O.B.

SAGUARO HOLE NO. 4
7.8218 AC.

1100°43'12"E
2629.49'

S81°57'52"W 535.46'

N80°00'00"W 280.00'

500'00'00"00'

N18°08'55"W
126.81'

N80°00'00"W
84.19'

100'00'00"00'

174.79'
S18°08'51"E

N27°13'58"W 248.93'

179.00'

177.00'

177.00'

177.00'

177.00'

177.00'

177.00'

177.00'

177.00'

177.00'

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177.00'

177.00'

177.00'

177.00'

177.00'

NO.	BEARING	DISTANCE
11	N80°00'00"W	51.00'
12	S44°17'34"W	41.00'
13	S82°44'22"W	30.00'
14	N22°18'12"W	32.18'

NO.	DELTA	RADIUS	LENGTH
C1	9°28'23"	185.21'	30.62'
C2	73°38'13"	122.48'	137.62'
C3	18°00'00"	240.22'	63.21'
C4	18°00'00"	20.00'	31.42'
C5	18°28'48"	244.82'	75.00'

Center, Sec. 8, T5N, R4E

816-01-TM-05 OCT. 30, 1986



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 5

That portion of the Northwest one-quarter (NW 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 2;

thence South 79° 43' 04" West, 1,062.37 feet to THE
TRUE POINT OF BEGINNING;

thence South 64° 17' 06" West, 551.92 feet;

thence North 89° 09' 23" West, 607.87 feet;

thence South 36° 31' 25" West, 288.75 feet;

thence South 15° 03' 58" West, 24.21 feet;

thence North 89° 15' 21" West, 145.19 feet;

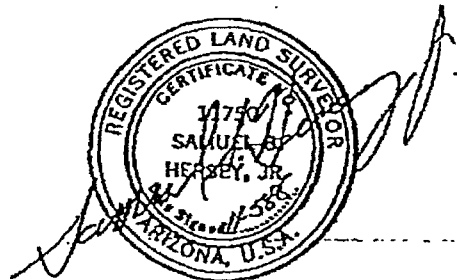
thence North 00° 44' 39" East, 275.00 feet;

thence North 29° 05' 52" East, 261.15 feet;

thence South 89° 09' 23" East, 1,297.96 feet to THE

TRUE POINT OF BEGINNING.

The herein described Golf Course Parcel contains 334,423 square feet, 7.6773 Acres, more or less.



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R.O.B.
N 1/4 Cor., Sec. 2, T5N, R4E

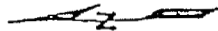
S89°08'23"E 1287.80'

T.R.O.B.
S 79°43'00"W
1062.37'

SAGUARO HOLE NO. 5
7.6773 AC.

N89°08'23"W 807.87'

Center, Sec. 2, T5N, R4E



SCALE: 1" = 100'

NO.	BEARING	DISTANCE
11	S13°03'58"W	24.21'

N29°05'52"E 261.15'

N00°44'39"E 275.00'

N89°13'21"W
145.18'

S26°21'35"W 288.75'

216-01-TM-45 OCT. 30 1986



DKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

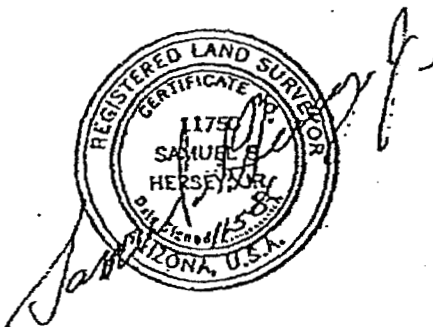
LEGAL DESCRIPTION
OF
SAGUARO-9 GOLF COURSE
HOLE NO. 6

That portion of the Northwest one-quarter (NW 1/4) of
Section 2, Township 5 North, Range 4 East of the Gila and
Salt River Base and Meridian, in Maricopa County, Arizona
described as follows:

Commencing at the North one-quarter (N 1/4) corner of said
Section 2;

thence South 75° 19' 14" West, 1,688.05 feet to THE
TRUE POINT OF BEGINNING;
thence South 00° 50' 37" West, 95.99 feet;
thence South 54° 29' 12" West, 190.01 feet;
thence North 75° 13' 05" West, 180.97 feet;
thence South 85° 49' 31" West, 170.57 feet;
thence South 26° 07' 23" West, 30.00 feet;
thence South 81° 54' 02" West, 176.65 feet;
thence North 36° 31' 25" East, 288.75 feet;
thence South 89° 09' 23" East, 517.48 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Parcel contains 106,694 square
feet, 2.4494 Acres, more or less.



5246 South 40th Street
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SCALE: 1"=100'

R.O.B.
N 1/4 Cor, Sec. 2, T5N, R4E

2642.09'
S89°17'33"E

35 36
2 1

575°19'14" W 1688.05'

T.R.O.B.

S89°09'23"E 517.48'

S200°30'27"W 95.99'

SAGUARO HOLE NO. 6
2.4494 AC.

N26°31'25"E 286.75'

S85°49'31"W 170.57'

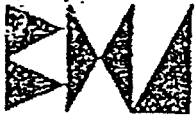
N73°13'03"W 180.37'

S5°10'09"E 85.21'

S81°54'02"W 176.65'

NO.	BEARING	DISTANCE
11	S28°07'23"W	30.00'

216-01-TM-45 OCT. 30, 1986



BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 7

That portion of the Northwest one-quarter (NW 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 2;

thence South 75° 19' 14" West, 1,688.05 feet to THE
TRUE POINT OF BEGINNING;
thence South 89° 09' 23" East, 90.40 feet;
thence South 27° 13' 38" East, 320.00 feet;
thence South 31° 32' 52" East, 105.28 feet;
thence North 51° 37' 36" East, 126.53 feet to the point
of cusp, said point of cusp being the beginning of a
non-tangent curve concave to the East, having a radius of
200.00 feet and a radial bearing to said beginning of North
56° 58' 19" West;
thence Southerly along said curve through a central
angle of 53° 01' 41", an arc distance of 185.10 feet to the
point of tangency;
thence South 20° 00' 00" East, 128.48 feet to the
beginning of a curve concave to the Northeast, having a
radius of 145.62 feet;
thence Southeasterly along said curve through a central
angle 30° 00' 00", an arc distance of 76.25 feet to the
point of tangency;
thence South 50° 00' 00" East, 70.90 feet to the
beginning of a curve concave to the Southwest having a
radius of 500.36 feet;
thence Southeasterly along said curve through a central
angle of 14° 13' 11", an arc distance of 124.18 feet to a
point of reverse curvature of a curve concave to the
Northeast having a radius of 86.92 feet;

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Phoenix Arizona 85040
(602) 437-3733

thence Southeasterly along said curve through a central angle of $37^{\circ} 45' 00''$, an arc distance of 57.27 feet to the point of tangency;

thence South $73^{\circ} 31' 49''$ East, 28.91 feet to the beginning of a curve concave to the Southwest, having a radius of 20.00 feet;

thence Southeasterly along said curve through a central angle of $76^{\circ} 08' 45''$, an arc distance of 26.58 feet to the point of reverse curvature of a curve concave to the East, having a radius of 150.40 feet;

thence Southerly along said curve through a central angle of $12^{\circ} 56' 55''$, an arc distance of 33.99 feet;

thence on a non-tangent line, North $79^{\circ} 40' 01''$ East, 8.95 feet to the beginning of a non-tangent curve concave to the Northwest having a radius of 116.36 feet and a radial bearing to said beginning of North $79^{\circ} 40' 01''$ East;

thence Southwesterly along said curve through a central angle of $49^{\circ} 34' 20''$, an arc distance of 100.67 feet to the point of reverse curvature of a curve concave to the Southeast having a radius of 275.00 feet;

thence Southwesterly along said curve through a central angle of $12^{\circ} 06' 23''$, an arc distance of 58.11 feet;

thence on a non-tangent line, North $51^{\circ} 32' 27''$ West, 471.99 feet;

thence North $76^{\circ} 35' 17''$ West, 52.97 feet;

thence North $23^{\circ} 30' 31''$ West, 202.15 feet;

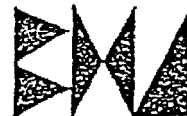
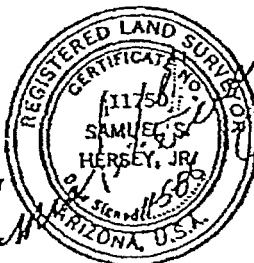
thence North $07^{\circ} 49' 56''$ West, 192.79 feet;

thence North $11^{\circ} 17' 08''$ West, 131.59 feet;

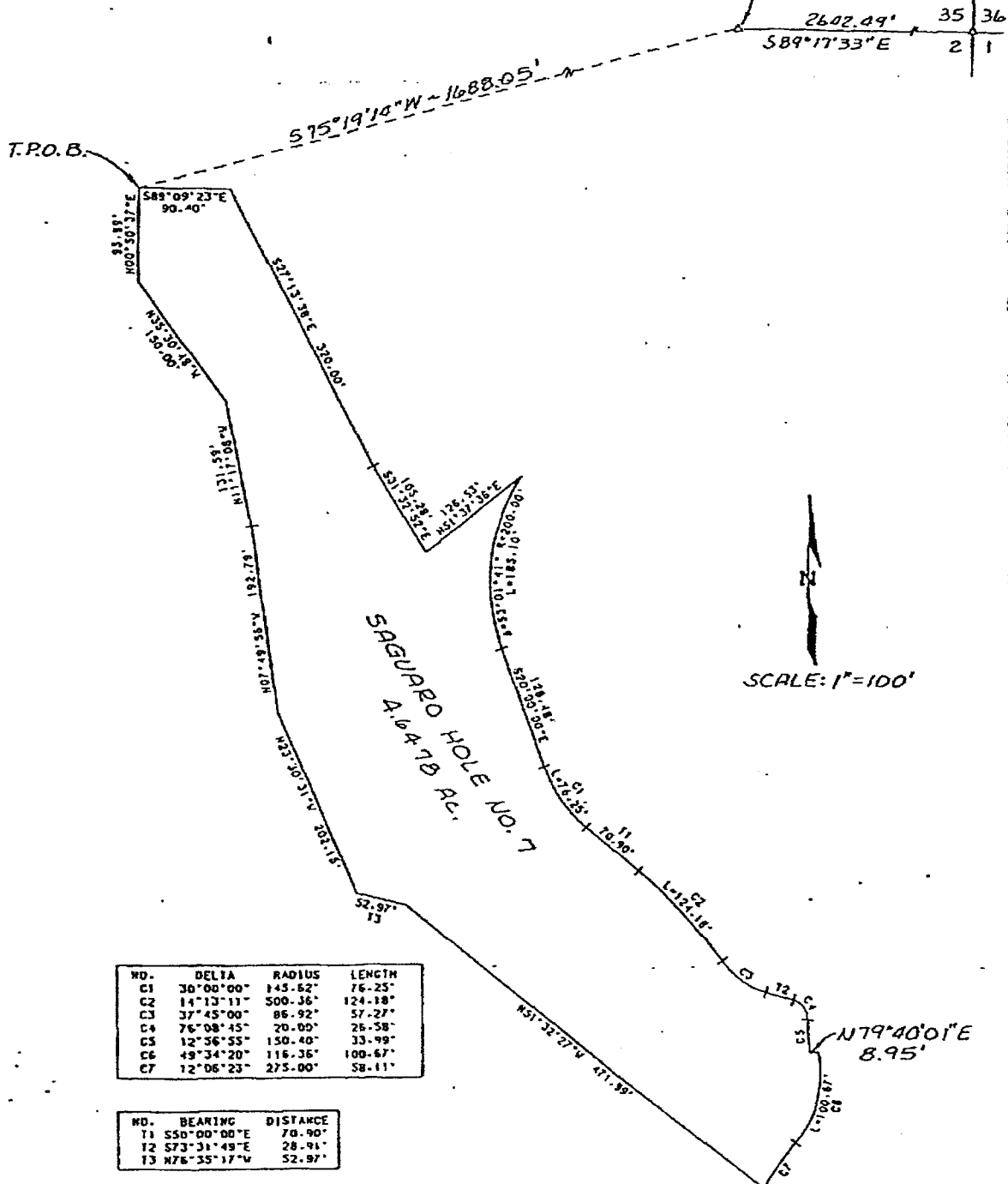
thence North $35^{\circ} 30' 48''$ West, 150.00 feet;

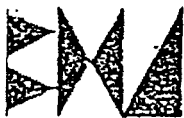
thence North $00^{\circ} 50' 37''$ East, 95.99 feet to THE TRUE POINT OF BEGINNING.

The herein described Golf Parcel contains 202,457 square feet, 4.6478 Acres, more or less.



OCT. 30, 1956
216-01-7M-45





BROOKS, HERSEY & ASSOCIATES, INC.
ENGINEERS/SURVEYORS

Job No. 216-01-TM-45
October 30, 1986
J.S.

LEGAL DESCRIPTION
OF
SAGUARO 9 GOLF COURSE
HOLE NO. 8

That portion of the Northwest one-quarter (NW 1/4) of Section 2, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona described as follows:

Commencing at the Center corner of said Section 2;
thence North 32° 54' 20" West, 261.16 feet to THE TRUE POINT OF BEGINNING;
thence South 78° 57' 04" West, 94.32 feet;
thence North 00° 57' 32" East, 32.81 feet;
thence North 00° 58' 10" East, 36.67 feet;
thence North 18° 38' 54" East, 120.00 feet;
thence North 71° 21' 06" West, 317.00 feet;
thence North 32° 01' 15" West, 785.79 feet to the beginning of a non-tangent curve concave to the Southeast, having a radius of 225.00 feet, and a radial bearing to said beginning of North 60° 40' 37" West;
thence Northeasterly along said curve through a central angle of 09° 54' 58", an arc distance of 38.94 feet to the point of reverse curvature of a curve concave to the Northwest, having a radius of 166.36 feet;
thence Northeasterly along said curve through a central angle of 49° 34' 20", an arc distance of 143.93 feet;
thence on a non-tangent line, North 79° 40' 01" East, 1.05 feet to the beginning of a non-tangent curve concave to the Southeast, having a radius of 90.40 feet and a radial bearing to said beginning of South 79° 40' 01" West;
thence Northerly and Northeasterly along said curve through a central angle of 100° 28' 59", an arc distance of 158.54 feet;
thence on a non-tangent line, South 16° 13' 40" East, 146.80 feet;
thence South 23° 56' 28" East, 348.07 feet;
thence South 27° 51' 42" East, 220.00 feet;

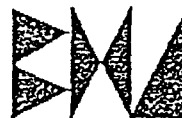
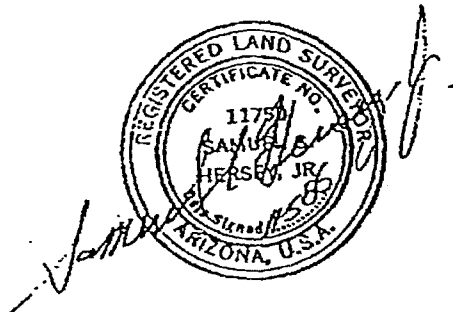
5246 South 40th Street
Phoenix, Arizona 85040
(602) 437-3733

Legal Description
Saguaro 9, Hole No. 8
Page 2

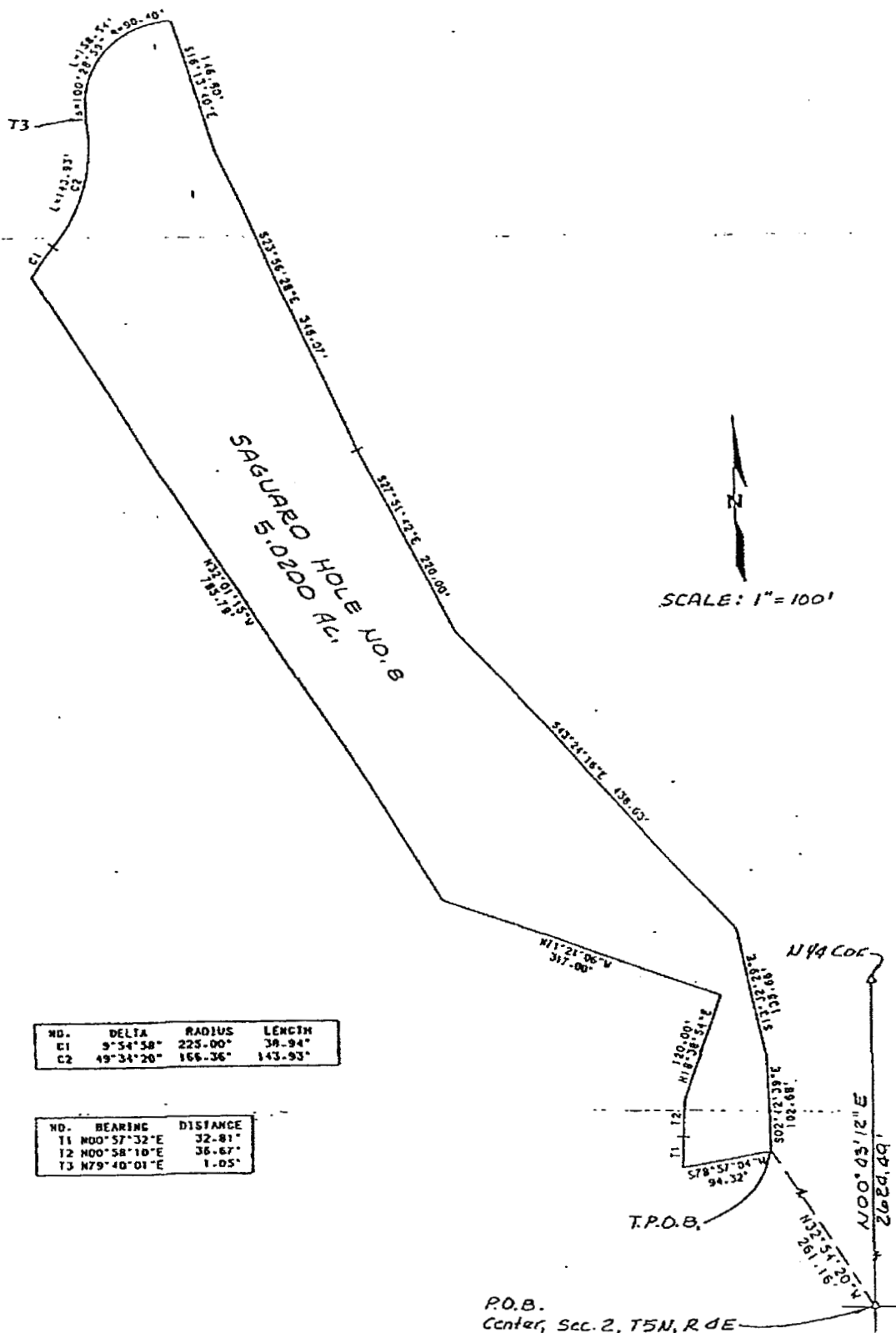
215-01-TM-45
Oct. 30, 1986
J.S.

thence South $43^{\circ} 24' 16''$ East, 438.63 feet;
thence South $13^{\circ} 32' 29''$ East, 135.66 feet;
thence South $02^{\circ} 42' 39''$ East, 102.68 feet to THE TRUE
POINT OF BEGINNING.

The herein described Golf Course parcel contains 218,670
square feet, 5.0200 Acres, more or less.



216-01-TM-45 OCT. 30, 1968



SECOND AMENDMENT TO AGREEMENT NO. 920004
PIPELINE CAPACITY AGREEMENT

This Second Amendment to Agreement No. 920004 (the "**Second Amendment**") is made as of this 1st day of April, 2008 by and between the City of Scottsdale, Arizona (the "**City**") and Wind P1 Mortgage Borrower LLC, a Delaware limited liability company ("**Owner**").

RECITALS

A. Boulders Joint Venture, a joint venture formed under the Arizona Uniform Partnership Act (the "**Joint Venture**"), and the City entered into that Pipeline Capacity Agreement dated February 3, 1992 (the "1992 Agreement"). The Joint Venture and the City subsequently amended the Agreement through that First Amendment to Pipeline Capacity Agreement No. 920004 dated December 19, 1994 (together with the 1992 Agreement, the "**Agreement**"). Owner is the successor to the Joint Venture under the Agreement; and

B. Among other things, the Agreement provided for the construction, operation and use of a Reclaimed Water Distribution System ("**RWDS**") for the delivery of Non-Potable Water to the Property; and

C. Pursuant to the Agreement, Owner, or its predecessor, has purchased one and one-quarter (1.25) million gallons per day ("**MGD**") of capacity in the RWDS for the delivery of Non-Potable Water to the Property; and

D. As contemplated in the Agreement, the City constructed and now owns and operates a Wastewater Treatment Plant ("**WWTP**") which is located at 8787 East Hualapai Drive, Scottsdale, AZ 85255 which is the City's Water Campus facility. The WWTP produces effluent as a byproduct of its treatment of wastewater. The City currently delivers Non-Potable Water consisting of a mixture of Surplus CAP Water and effluent from the WWTP for use in irrigating the turf and other landscaping at The Boulders Resort (North and South) (together, the "**Golf Course**") and at other golf courses that are RWDS customers; and

E. Also located at the Water Campus facility are certain components and equipment described on Exhibit F and referred to as the Advanced Water Treatment System ("**AWTS**"), which the City uses to conduct additional treatment of effluent that is then used for aquifer recharge; and

F. Based on recommendations of the 2008 Scottsdale Integrated Wastewater Master Plan, the City has determined it is necessary to expand and improve the AWTS to match the existing capacity of the WWTP in order to provide sufficient treatment capacity when there is low RWDS demand and aquifer recharge is necessary; and

G. Over time, the concentration of sodium and other minerals within the Non-Potable Water delivered by the City through the RWDS has increased. The Owner is concerned that the increased concentration of sodium within the Non-Potable Water has been and is detrimental to the health of the turf and other irrigated landscaping at the Golf Course, and has caused and is causing material damage to the turf and other irrigated landscaping at the Golf Course. Without action, the concentration of minerals in the Non-Potable Water may increase, and the Owner is concerned that such an increase could cause additional damage to the turf and other irrigated landscaping at the Golf Course; and

H. The City and the Owner have agreed that the best option to reduce the concentrations of sodium and other minerals in the Non-Potable Water is for the City to use the

AWTS to treat an appropriate portion of the effluent delivered to RWDS customers, thereby reducing the concentrations of sodium and other minerals in the Non-Potable Water delivered through the RWDS, and the expanded and improved AWTS will have sufficient capacity to treat an appropriate portion of the effluent delivered to RWDS customers; and

I. The City acknowledges the Owner's concerns about increasing concentrations of sodium and other minerals and that these increases may cause or may be causing damage to the turf and other irrigated landscaping at the Golf Course. Accordingly, the Owner has requested that the City consider implementing changes in policy and/or ordinance that may reduce the concentrations of sodium and other minerals in the wastewater treated at the WWTP, and the City is exploring the feasibility of implementing these changes; and

J. The City and Owner now wish to amend the Agreement to provide for additional expansion and improvement of the AWTS at the Water Campus and for cooperative financing of this expansion and improvement and to establish standards for sodium concentrations within the Non-Potable Water and to establish a testing protocol, all on the terms and conditions contained in this Second Amendment.

AGREEMENT

For valuable consideration and the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

1. Recitals. The Recitals are incorporated into this Second Amendment.
2. Capitalized Terms. Capitalized terms used in this Second Amendment and not otherwise defined will have the meaning defined for that term in the Agreement.
3. Wastewater Treatment Plant (WWTP). The City acknowledges that the WWTP described in this Second Amendment is the same facility as the Wastewater Treatment Plant referred to in the Agreement. The AWTS is located on the same campus as the WWTP and is currently used to treat effluent for aquifer recharge. Following the expansion and improvement of the AWTS, as described on Exhibit F attached to this Second Amendment, a portion of the effluent treated with the AWTS will be used as part of the Non-Potable Water delivered to the Property, as provided in this Second Amendment.
4. Amendment to Agreement. The Owner and the City amend the Agreement as follows:
 - A. Definitions. Section 1 of the Agreement is amended by:
 - (i) Deleting Section 1.2, and inserting the following in its stead:

"1.2 "Force Majeure" means acts of God, riots, acts of war, acts of terrorism, epidemics, governmental regulations imposed after the fact, fire, flood, transportation failures, communication line failures, or power failures or any other act beyond the control of the City and which, by the exercise of due diligence, the City is unable to prevent or to mitigate." ; and
 - (ii) Inserting the following Sections immediately after Section 1.9:

"1.10 "Advanced Water Treatment System" or "AWTS" means those certain components and equipment located at the Water Campus and

described on Exhibit F, and used by the City to conduct additional treatment of effluent that is then recharged by the City in an underground water storage facility or used as a part of Non-Potable Water delivery to the Property. Following the expansion and improvement of the AWTS, as described on Exhibit F, the term ATWS will include the components and equipment installed as part of that expansion and improvement. All references in this Agreement to the expansion and improvement of the ATWS refer to the expansion and improvement described on Exhibit F.

1.11. "Water Campus" means that City complex located at 8787 East Hualapai Drive, Scottsdale, Arizona 85255 on which is located the WWTP, the AWTS and other City utility facilities.

1.12. "WWTP and RWDS operation and maintenance costs" or "WWTP and RWDS O & M" means those cost components identified in Paragraphs 2(a), 4 and 5 on Exhibit B-1 to the Agreement, as amended.

1.13. "RWDS delivery charges" means those cost components identified in Paragraph 3 on Exhibit B-1 to the Agreement, as amended.

1.14. "AWTS operation and maintenance costs" or "operation and maintenance costs associated with the AWTS" means cost components identified in Paragraph 2(b) on Exhibit B-1 to the Agreement, as amended."

B. Advanced Water Treatment System. Section 2 of the Agreement is amended by (i) re-numbering Section 2.6 to Section 2.7; and (ii) inserting the following new Section 2.6 immediately after Section 2.5:

"2.6. Expansion, Improvement, Operation and Maintenance of Advanced Water Treatment System; Testing; Sodium Concentration Standards. As a part of the expansion and improvement of the AWTS, the City agrees to improve the quality of the Non-Potable Water delivered through the RWDS as follows:

(a) On or before May 1, 2008 the City will initiate the design process for the expansion and improvement of the AWTS as described on Exhibit F and will use its best efforts to complete the expansion and improvement of the AWTS on or before April 1, 2011. All design and construction related costs of the expansion and improvement of the AWTS (the "AWTS Construction Costs") will be the responsibility of the City. The City will instruct the AWTS design engineer to consider adding, where reasonably practicable, components in the design of the AWTS to help ensure that concentrations of chlorine and boron in the Non-Potable Water delivered to the RWDS users are not increased as a result of incorporation of effluent treated with the AWTS into the delivery blend.

(b) The Owner will pay the City \$4,687.50 per month (based on an amount due of \$45,000 per year per MGD share) for a period of 25 years to reimburse the City for the Owner's share of the AWTS Construction Costs, including financing costs (the "Owner's Monthly Share"). Other than the payment of the Owner's Monthly Share, the Owner will have no obligation whatsoever to pay any portion of the AWTS Construction Costs, including financing charges. The Owner's obligation to pay the Owner's Monthly Share will commence 30 days after the date the City has a fully executed agreement with an entity to serve as the contractor for the construction of any part of the AWTS. The City will provide notice

to Owner promptly following the execution of such a construction agreement. Thereafter, during the construction period, the Owner's Monthly Share will be paid from the RWDS Replacement/Construction fund maintained by the City. The payment of the Owner's Monthly Share from the RWDS Replacement/Construction Fund will continue once a month for 24 months. Following this 24 month period, for the next 23 years the City will charge the Owner's Monthly Share as a component of the monthly bill to the Owner for RWDS water deliveries, and the Owner will pay the Owner's Monthly Share at the same time that it pays the monthly bill for RWDS water deliveries.

(c) Expansion and improvement of the AWTS will be considered to have occurred when the AWTS has been fully tested and is operational for all purposes for which it is intended. Following the expansion and improvement of the AWTS, the City will perform all operation, maintenance, repair and replacement required at the facility, according to normal and customary City practices and in accordance with all applicable law. A portion of the effluent treated with the AWTS following its expansion and improvement will be delivered to RWDS customers and a portion of the effluent treated with the AWTS will be recharged by the City at its underground water storage facility. Accordingly, a percentage of the cost of operation, maintenance, repair and replacement of the AWTS as described on Exhibit F, proportionate to the amount of effluent treated with the AWTS and delivered to RWDS customers, will be considered a cost of operation of the RWDS and will be recovered by the City through the Non-Potable Water rates charged to RWDS customers by the City and calculated as provided on Exhibit B-1.

(d) Following expansion and improvement of the AWTS, the City will conduct daily testing for the sodium concentration in the effluent treated with the AWTS by collecting a 24-hour composite sample using an automated sampler that withdraws not less than three (3) water samples at periodic intervals during each 24-hour period and combines the multiple samples into one composite sample for daily testing purposes. All testing of each daily composite water sample will be conducted by a laboratory licensed by the State of Arizona and otherwise qualified for water testing purposes under applicable State and Federal law (the "Testing Lab"). The Testing Lab will collect composite water samples from Reservoir A at the Water Campus, or at such other location where effluent and untreated CAP water are blended immediately before distribution through the RWDS to RWDS customers. The result of a particular day's testing for sodium concentration is referred to as the "Daily Test Result." To be "valid" or "validated" under this Agreement, a "Daily Test Result" must be conducted in a manner that complies with all established quality assurance and quality control procedures of the Testing Lab.

(e) Following the collection of each composite testing sample, the Testing Lab will split the testing sample into two approximately equal portions; will use one portion for testing sodium concentrations; and will retain the second portion of the split sample for not less than 30 days. The Testing Lab will apply the Testing Lab's established quality assurance and quality control procedures when testing the daily composite water sample. The Testing Lab will make the second portion of the split sample available to the Owner, if the Owner desires to have an independent analysis conducted, unless the Testing Lab has previously provided the second portion of the split sample to another RWDS customer.

(f) Following expansion and improvement of the AWTS, the City

will, on a daily basis, determine the 14-Day Rolling Average Sodium Concentration (as defined below) for the Non-Potable Water delivered to the RWDS. The **"14-Day Rolling Average Sodium Concentration"** for a particular day is defined as a concentration of sodium equal to (A) the validated Daily Test Result for the day in question, (B) plus the Daily Test Results for each of the immediately-preceding 13 days for which validated Daily Test Results are available, and (C) divided by 14. As described above, the 14-Day Rolling Average Sodium Concentration will be based on an arithmetic mean. Except as provided in subsection 2.6(g)(3), no later than the 15th day of the following month, the City will provide a report to the Owner of the Daily Test Results and of the 14-Day Rolling Average Sodium Concentrations by electronic mail or other mutually agreed means for each day of the previous month. In addition, the City will cause the Daily Test Results and the 14-Day Rolling Average Sodium Concentrations to be posted on the City's website, within a reasonable period of time after the test results have been validated. The parties agree that it is appropriate and acceptable to use the Daily Test Results to determine the 14-Day Rolling Average Sodium Concentrations under this Agreement.

(g) Following expansion and improvement of the AWTS:

(1) On each day that the City delivers any Non-Potable Water through the RWDS, the City will deliver Non-Potable Water through the RWDS having a 14-Day Rolling Average Sodium Concentration equal to or less than 125 mg/l; and

(2) On each day that the City delivers any Non-Potable Water through the RWDS, the City will deliver Non-Potable Water through the RWDS having a Daily Test Result equal to or less than 150 mg/l. The City's compliance with this subsection 2.6(g) (2) will be determined using the validated Daily Test Result for the day in question, and there is no need or requirement for the City to test the sodium concentration of the Non-Potable Water actually delivered into the reservoirs serving any RWDS customer to determine whether Non-Potable Water exceeds the 150 mg/l maximum. The 125mg/l and the 150mg/l limits established in subsections 2.6(g)(1) and (2) are sometimes referred to, individually, as a **"Sodium Concentration Standard"** and, collectively, as the **"Sodium Concentration Standards"**; and

(3) If the City foresees a treatment issue that could result in a Daily Test Result of more than 150 mg/l within the Non-Potable Water, or if a validated Daily Test Result exceeds 150 mg/l, the City will immediately notify the Owner by electronic mail or other mutually agreed means; and

(4) If the 14-Day Rolling Average Sodium Concentration exceeds 125 mg/l, the City will provide Non-Potable Water at a proportional volume and sodium concentration (less than 125 mg/l) the following month so as to offset any cumulative sodium excess as calculated and summarized in the monthly reports.

(h) Before the expansion and improvement of the AWTS, and on a daily basis between and including September 15th and November 15th of each year and between and including May 15th and July 15th of each year, on each day that the City delivers any Non-Potable Water through the RWDS, the City will deliver Non-Potable Water in compliance with the provisions of subsections 2.6(g)

(1) and (2).

(i) In addition to any other rights and remedies that the Owner may have under this Agreement, and despite anything stated to the contrary in this Agreement (including any Exhibits), for each day that the City delivers Non-Potable Water through the RWDS that exceeds a Sodium Concentration Standard:

(1) The Owner will have the rights and remedies provided in this subsection, without any requirement that the Owner deliver a written notice that a Sodium Concentration Standard has been exceeded, and the Cure Period (defined below) shall not apply to an exceedence of a Sodium Concentration Standard;

(2) For all Classes of Exceedence described on Exhibit G except a Class VI Exceedence, the City will reduce the charges and fees imposed on the Owner for the delivery of Non-Potable Water as provided in this subsection and on Exhibit G, as follows:

(i) At the same time that the City delivers its Annual RWDS Accounting (defined below) to the Owner, the City will report to Owner the days (if any) during each billing period of the immediately-preceding fiscal year that a Sodium Concentration Standard was exceeded, the amount by which the Sodium Concentration Standard was exceeded for that day, and the Class of Exceedence for that billing period, as described on Exhibit G; (An example of a report under this subsection is attached as Exhibit G-1.)

(ii) At the same time that the City delivers its Annual RWDS Accounting to the Owner, for each day during the immediately-preceding fiscal year that a Sodium Concentration Standard was exceeded, the City will provide a detailed report that identifies the operation and maintenance costs associated with the AWTs assessed to the Owner for that day and, if the exceedence was a Class II, III, IV or V exceedence, the WWTP and RWDS operation and maintenance costs and RWDS delivery charges assessed to the Owner for that day; (A sample of a report under this subsection is attached as Exhibit G-2.)

(iii) In its Annual RWDS Accounting, except as provided in subsection 2.6(i)(4), the City will reduce the Owner's RWDS charges for the immediately-preceding fiscal year by the total of (I) the AWTs operation and maintenance costs assessed to the Owner for each day during the immediately-preceding fiscal year that there was a Class I, II, III, IV or V exceedence of a Sodium Concentration Standard; and (II) if an exceedence of a Sodium Concentration Standard during the prior fiscal year was a Class II, III, IV or V exceedence, a percentage of the WWTP and RWDS operation and maintenance costs and RWDS delivery charges assessed to the Owner for the day(s) that such an exceedence occurred, based on Exhibit F; (As described in the examples provided in Exhibits G-1 and G-2.)

(3) For all Class VI exceedences as described on Exhibit F, the City will reduce the charges and fees imposed on the Owner for the delivery of Non-Potable Water as provided in this subsection and on Exhibit

G, as follows:

(i) At the same time that the City delivers its next monthly RWDS bill to the Owner following the Class VI exceedence, the City will report the days during the preceding billing period that a Class VI exceedence of a Sodium Concentration Standard occurred and the amount by which the Sodium Concentration Standard was exceeded for each day; (An example of a report under this subsection is attached as Exhibit G-1.)

(ii) At the same time that the City delivers its next monthly RWDS bill to the Owner, for each day during the preceding billing period that there was a Class VI exceedence of a Sodium Concentration Standard, the City will provide a detailed report that identifies the operation and maintenance costs associated with the AWTS that the City would otherwise have charged the Owner for that day, and the WWTP and RWDS operation and maintenance costs and RWDS-delivery charges that the City would otherwise have charged the Owner for that day; (An example of a report under this subsection is attached as Exhibit G-2.)

(iii) Except as provided in subsection 2.6(i)(4), in the monthly RWDS bill to the Owner described in subsection 2.6(i)(3)(i) and (ii), the City will reduce the Owner's RWDS charges for the prior billing period by the total of (I) the AWTS operation and maintenance costs that the City would otherwise have charged the Owner for each day during the prior billing period that there was a Class VI exceedence of a Sodium Concentration Standard; and (II) one hundred percent of the WWTP and RWDS operation and maintenance costs and RWDS delivery charges that the City would have otherwise charged the Owner for the day(s) that a Class VI exceedence occurred; and

(iv) In its next Annual RWDS Accounting, the City will adjust the Owner's RWDS charges for the immediately-preceding fiscal year by taking into account the reductions in RWDS charges, if any, that occurred under subsection 2.6(i)(3)(iii) during the prior fiscal year.

(4) The City will have absolutely no obligation to reduce the charges and fees imposed on the Owner for the delivery of Non-Potable Water as provided in subsections 2.6(i) (2) and (i) (3) for any exceedence of a Sodium Concentration Standard that occurred as a result of a Force Majeure matter and for so long as the Force Majeure matter continues.

(5) The term "Annual RWDS Accounting" means that annual true-up statement delivered by the City to each RWDS customer detailing, among other things, the actual costs incurred by the City during the immediately-preceding fiscal year to own and operate the RWDS, split out for those components described on Exhibits B-1 and B-2, the Owner's obligation to pay such actual costs based on the amount of Non-Potable Water delivered through the RWDS to Owner during the immediately-preceding fiscal year, and the amount due to or from the Owner, given the payments made by the Owner during the immediately-preceding fiscal year for deliveries of Non-Potable Water through the RWDS to Owner."

C. Non-Potable Water Delivery Obligations. Section 4.1 of the Agreement is

amended by inserting the following sentences at the end of that Section:

"Except as permitted under Section 6.3, the City's determination that Non-Potable Water in the amount requested by Owner is available for delivery will not be affected by an exceedence of a Sodium Concentration Standard. The City will not use an exceedence of a Sodium Concentration Standard as a reason for refusing to deliver the amount of Non-Potable Water requested by the Owner from time to time."

D. Emergency Shut-Downs. Section 6 of the Agreement is amended by inserting the following new Section 6.3 immediately after Section 6.2:

"6.3 The City may consider it an emergency under Section 6.1 if a Class VI exceedence of the Sodium Concentration Standard occurs and for so long as the Class VI exceedence continues. During each such emergency, the City may shut-down the RWDS for a period not to exceed 48 hours. After the 48 hour period, and for so long as the Class VI exceedence continues, the Owner may elect (i) to request deliveries of Non-Potable Water, and the City will deliver Non-Potable Water as provided in Section 4.1, without regard to whether or not the Class VI exceedence continues; or (ii) to request deliveries of potable water, and the City will deliver potable water as provided in Section 4.3; or (iii) to request a combination of deliveries of Non-Potable Water and potable water, and the City will deliver the mix of water it considers appropriate under the circumstances. The rights and remedies of Owner under subsection 2.6(i) shall not be affected by this subsection."

E. Default Provision. Section 15.1 is amended by adding the following phrase immediately after the word "Agreement," appearing in the second line "except as provided in Section 2.6(i),".

F. Exhibit B-1. Exhibit B-1 of the Agreement is amended as follows:

(i) Change existing Paragraph 2 of Exhibit B-1 to subparagraph 2(a). Immediately after subparagraph 2(a) of Exhibit B-1, insert new subparagraph 2(b) as follows:

"(b) Operation and maintenance of the components of the AWTS, as described on Exhibit E, following the expansion and improvement of the AWTS, in proportion to the amount of effluent treated with the AWTS and delivered through the RWDS."

(ii) Change existing Paragraph 10 of Exhibit B-1 to subparagraph 10(a). Immediately after subparagraph 10(a) of Exhibit B-1, insert new subparagraph 10(b) as follows:

"(b) Percentage of the financing costs incurred by the City for the purpose of the replacement of components of the AWTS as described on Exhibit E, following the expansion and improvement of the AWTS, in proportion to the amount of effluent treated with the AWTS and delivered through the RWDS."

5. No Further Amendments. Except as provided above, the Agreement will remain in full force and effect.

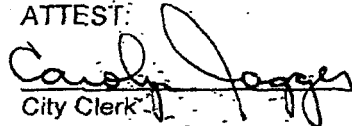
6. Limited Purpose; No Waiver or Release. The parties agree that the purpose of this Second Amendment is to address and resolve the Owner's concerns about excessive sodium concentrations in the Non-Potable Water delivered through the RWDS. The parties acknowledge that other problems may arise in the future due to the concentration of other constituents in the Non-Potable Water delivered through the RWDS, such as chlorine and boron. Each party reserves any and all rights, remedies, claims and defenses that it may have under the Agreement resulting or arising from or in response to these other constituents. Nothing in this Second Amendment is intended to or will limit, reduce, waive or release any rights, remedies, claims and defenses; and each party may pursue its rights, remedies and claims and assert its defenses with regard to any other constituents to the same extent as would be available before the execution of this Second Amendment.

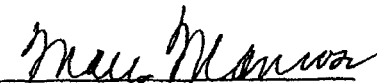
7. Counterpart Signatures. This Second Amendment may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one in the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment as of the date stated above.

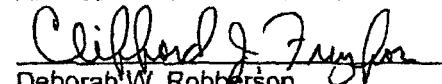
CITY OF SCOTTSDALE, an Arizona
Municipal Corporation

ATTEST:


City Clerk

By: 
Name: Mary Manross
Its: Mayor

APPROVED AS TO FORM:


Deborah W. Roberson
City Attorney

WIND P1 MORTGAGE BORROWER LLC,
a Delaware limited liability company

By: 
Name: Michael Hoffmann
Its: General Manager

EXHIBIT F

AWTS Expansion and Improvement Requirements 2008 Scottsdale Integrated Wastewater Master Plan

Component¹	Existing Capacity	Required Capacity
Microfiltration	8.0 mgd	31.0 mgd
Membrane Filter Filtrate Pumps	18.1 mgd	23.6 mgd
Reverse Osmosis System	14.0 mgd	23.6 mgd
RO Post Treatment	7.8 mgd	17.7 mgd
Product Water Pumps	17.0 mgd	27.5 mgd
Advanced Oxidation	NA	27.5 mgd

¹For details of the individual components, refer to the City of Scottsdale 2008 Integrated Wastewater Master Plan

EXHIBIT G

Classes of Exceedence of Sodium Concentration Standards; Calculation of Reduction in Charges

Number and Extent of Exceedences of Sodium Concentration Standard	Class of Exceedence of Sodium Concentration Standard	AWTS O & M Credits	WWTP AND RWDS O & M Credits
<p>One exceedence of Sodium Concentration Standard¹ during a billing period; <u>and</u></p> <ul style="list-style-type: none"> - the Daily Test Result causing the exceedence is greater than 150 mg/l and is less than 155 mg/l; <u>or</u> - the 14-Day Rolling Average Sodium Concentration causing the exceedence is greater than 125 mg/l and less than 130 mg/l. 	I	100%	0%
<p>Two exceedences of Sodium Concentration Standard of any type or extent during a billing period; <u>or</u></p> <p>One Daily Test Result during a billing period equals or exceeds 155 mg/l and is less than 165 mg/l; <u>or</u></p> <p>One 14-Day Rolling Average Sodium Concentration during a billing period equals or exceeds 130 mg/l and is less than 137.5 mg/l.</p>	II	100%	10%
<p>Three exceedences of Sodium Concentration Standards of any type or extent during a billing period; <u>or</u></p> <p>One Daily Test Result during a billing period equals or exceeds 165 mg/l and is less than 180 mg/l; <u>or</u></p> <p>One 14-Day Rolling Average Sodium Concentration during a billing period equals or exceeds 137.5 mg/l and is less than 150 mg/l.</p>	III	100%	20%
Four exceedences of Sodium Concentration Standard of any type or extent during a billing			

¹ Either a Daily Test Result in excess of 150 mg/l or a 14-Day Rolling Average Sodium Concentration in excess of 125 mg/l.

² Credit for all AWTS O & M charges for water deliveries on the day of the exceedence of Sodium Concentration Standard. See subsections 2.6(i)(2) and 2.6(i)(3) and examples on Exhibits G-1 and G-2.

³ Credit for WWTP and RWDS O & M and delivery charges for water deliveries on the day(s) of the exceedences of Sodium Concentration Standard. See subsections 2.6(i)(2) and 2.6(i)(3) and examples on Exhibits G-1 and G-2.

<p>period; <u>or</u></p> <p>One Daily Test Result during a billing period equals or exceeds 180 mg/l and is less than 195 mg/l; <u>or</u></p> <p>One 14-Day Rolling Average Sodium Concentration during a billing period equals or exceeds 150 mg/l and is less than 162.5mg/l.</p>	IV	100%	50%
<p>Five exceedences of Sodium Concentration Standard of any type or extent during a billing period; <u>or</u></p> <p>One daily Test Result during a billing period that equals or exceeds 195 mg/l and is less than 210 mg/l; <u>or</u></p> <p>One 14-Day Rolling Average Sodium Concentration during a billing period that equals or exceeds 162.5 mg/l and is less than 175 mg/l.</p>	V	100%	75%
<p>More than five exceedences of Sodium Concentration Standard of any type or extent during a billing period; <u>or</u></p> <p>One Daily Test Result during a billing period that equals or exceeds 210 mg/l; <u>or</u></p> <p>One 14-Day Rolling Average Sodium Concentration during a billing period that equals or exceeds 175 mg/l.</p>	VI	100%	100%

EXHIBIT G-1

Report - Pipeline Capacity Agreement Subsection 2.6(i)(2)(i)

Class of Exceedence: Classes I-V

(Sample)

Owner: _____

Golf Course: _____

Fiscal Year: July 1, 2010 - June 30, 2011

Billing Period	Date(s) of Exceedences of Sodium Concentration Standard	Type Level of Exceedence	Level of Sodium	Class of Exceedence
July 2010	0	N/A	N/A	N/A
August 2010	0	N/A	N/A	N/A
September 2010	9/1/2010	Daily Test Result	152 mg/l	I
October 2010	10/29/2010	Daily Test Result	154 mg/l	II
	10/30/2010	14 Day Average	126 mg/l	
November 2010	0	N/A	N/A	N/A
December 2010	0	N/A	N/A	N/A
January 2011	0	N/A	N/A	N/A
February 2011	0	N/A	N/A	N/A
March 2011	3/1/2011	Daily Test Result	165 mg/l	III
April 2011	0	N/A	N/A	N/A
May 2011	0	N/A	N/A	N/A
June 2011	0	N/A	N/A	N/A

Report - Pipeline Capacity Agreement Subsection 2.6(i)(3)(i)¹
Class of Exceedence: Class VI Only
(Sample)

Owner: _____
 Golf Course: _____
 Billing Period: July, 2010

Date(s) of Exceedences of Sodium Concentration Standard	Type Level of Exceedence	Level of Sodium	Class of Exceedence
7/2/2010	Daily Test Result	160 mg/l	VI
7/3/2010	Daily Test Result	160 mg/l	VI
7/4/2010	Daily Test Result	160 mg/l	VI
7/5/2010	14-Day Average	130 mg/l	VI
7/6/2010	14-Day Average	128 mg/l	VI
7/7/2010	14-Day Average	127 mg/l	VI
¹ To be used only if there is a Class VI Exceedence.			

EXHIBIT G-2

Report – Pipeline Capacity Agreement Subsectin 2.6(I)(2)(II)
Class of Exceedence: Classes I-V
(Sample)

Owner: _____

Golf Course: _____

CAP Zone: B

Fiscal Year: July 1, 2010 – June 30, 2011

A	B	C	D	E	F	G	H	I	J	K	L
Date of Exceedence of Sodium Concentration	Class of Exceedence	Amount of RWDS Non-Potable Water Delivered	Rate for AWTs O&M (per 1,000 gallons)	Credit to Owner ¹	Rate for RWDS O&M (per 1,000 gallons)	Percentage Adjustment Based on Exhibit G	Credit to Owner ²	Delivery Rate (per 1,000 gallons)	Percentage Adjustment Based on Exhibit G	Credit to Owner ³	Total Credit to Owner for Date of Exceedence ⁴
9/1/2010	I	950,000	\$0.37	\$351.50	N/A	N/A	N/A	N/A	N/A	N/A	\$351.50
10/29/2010	II	800,000	\$0.37	\$296.00	\$0.07	10%	\$5.60	\$0.33	10%	\$28.40	\$328.00
10/30/2010	II	800,000	\$0.37	\$296.00	\$0.07	10%	\$5.60	\$0.33	10%	\$28.40	\$328.00
3/1/2011	III	500,000	\$0.37	\$185.00	\$0.07	20%	\$7.00	\$0.33	20%	\$33.00	\$225.00
Cumulative Credit											\$1,232.50

¹ (C/1000 x D)

² (C/1000 x F) x G

³ (C/1000 x I) x J

⁴ E+H+K

Report – Pipeline Capacity Agreement Subsection 2.6(1)(3)(ii)
Class of Exceedence: Class VI Only
(Sample)

Owner: _____
Golf Course: _____
CAP Zone: B
Billing Period: July, 2010

A	B	C	D	E	F	G	H	I	J	K	L
Date of Exceedence of Sodium Concentration	Class of Exceedence	Amount of RWDS Non-Potable Water Delivered	Rate for AWTs O&M (per 1,000 gallons)	Credit to Owner ²	Rate for RWDS O&M (per 1,000 gallons)	Percentage Adjustment Based on Exhibit G	Credit to Owner ³	Delivery Rate (per 1,000 gallons)	Percentage Adjustment Based on Exhibit G	Credit to Owner ⁴	Total Credit to Owner for Date of Exceedence ⁵
7/2/2010	VI	1,000,000	\$0.37	\$370.00	\$0.07	100%	\$70.00	\$0.33	100%	\$330.00	\$770.00
7/3/2010	VI	950,000	\$0.37	\$351.50	\$0.07	100%	\$66.50	\$0.33	100%	\$313.50	\$731.50
7/4/2010	VI	800,000	\$0.37	\$296.00	\$0.07	100%	\$56.00	\$0.33	100%	\$284.00	\$616.00
7/5/2010	VI	800,000	\$0.37	\$296.00	\$0.07	100%	\$56.00	\$0.33	100%	\$284.00	\$616.00
7/6/2010	VI	950,000	\$0.37	\$351.50	\$0.07	100%	\$66.50	\$0.33	100%	\$313.50	\$731.50
7/7/2010	VI	950,000	\$0.37	\$351.50	\$0.07	100%	\$66.50	\$0.33	100%	\$313.50	\$731.50
Cumulative Credit											\$4,186.50

¹To be used only if there is a Class VI Exceedence.

²(C/1000 x D)

³(C/1000 x F) x G

⁴(C/1000 x I) x J

⁵E+H+K

2041184.2

CITY COUNCIL ACT REPORT



TO: MAYOR AND CITY COUNCIL 12/19/94
FROM: Water Resources Department
SUBJECT: ADOPT Resolution No. 4142
AUTHORIZE Agreement No. 920004A

AGENDA ITEM NO. 8
R. Klingler
M. Craig

STAFF

1989 BOND PROJECT

RECOMMENDATION

It is recommended that the City Council:

- 1) ADOPT Resolution No. 4142 which provides for an amendment to a Pipeline Capacity Agreement with a golf course desiring to receive water from the Reclaimed Water Distribution System (RWDS), and
- 2) AUTHORIZE Agreement No. 920004A, first amendment to the Pipeline Capacity Agreement with the Boulders Joint Venture for the purchase of additional capacity in the RWDS.

FACTS

On February 12, 1991, City Council adopted Resolution No. 3372 authorizing construction of a Reclaimed Water Distribution System (RWDS). The Council also adopted Agreement No. 900083 with Desert Mountain Properties, to allow other north area golf courses to participate financially and receive irrigation water from the RWDS.

The Pipeline Capacity Agreement is being utilized to enable the north area golf courses to participate financially in the design and construction of the RWDS, and enable them to reserve capacity in the system. The capacity reserved is the maximum flow rate that will be delivered to the private golf course over a 24-hour period. The purchase of the capacity does not provide golf course operators any ownership or control of the RWDS. The City will be the sole owner and operator of the RWDS. On February 3, 1992, the City approved a Pipeline Capacity Agreement with Boulders Joint Venture. This First Amendment reserves additional capacity in the RWDS for irrigation of additional golf course and turf area with raw CAP water or effluent from the RWDS.

The City Attorney's office has participated in the development of, reviewed, and concurs with the format of the Pipeline Capacity Agreement.

COMMUNITY IMPACT

The RWDS is a vital portion of the City's plans for providing non-potable water to north Scottsdale golf courses. This new golf course will be using raw RWDS water, and in the future reclaimed effluent, and will not be using potable water for its golf course.

ACTION TAKEN _____

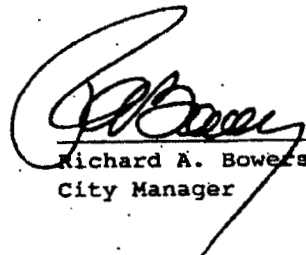
CITY COUNCIL ACTION REPORT

FISCAL IMPACT

No additional expenditures of City funds are required for this action. Funds received from the golf course will be used to repay the City and Desert Mountain Properties, in accordance with Agreement No. 900083, for construction costs of the RWDS.



Roger Klingler, General Manager
Water Resources Department



Richard A. Bowers
City Manager

RESOLUTION NO. 4142

A RESOLUTION OF THE CITY OF SCOTTSDALE,
MARICOPA COUNTY, ARIZONA, AUTHORIZING
THE MAYOR TO ENTER INTO AGREEMENT NO.
920004A FIRST AMENDMENT WITH BOULDERS
JOINT VENTURE RESERVING CAPACITY IN THE
RECLAIMED WATER DISTRIBUTION SYSTEM
PIPELINE FOR A CERTAIN GOLF COURSE.

WHEREAS, on February 12, 1991, the City Council authorized the construction of a new Reclaimed Water Distribution System (RWDS) to transport raw CAP water and reclaimed wastewater from a water reclamation plant to golf courses in the north area of the City for irrigation of the golf courses; and

WHEREAS, Pipeline Capacity Agreements are being used to enable the north area golf courses to participate financially in the design and construction of the RWDS and to enable them to reserve capacity in the system; and

WHEREAS, the City has reached agreement on the terms of the future delivery of reclaimed wastewater and raw CAP water in a Pipeline Capacity Agreement with Boulders Joint Venture; and

WHEREAS, it is in the interest of the citizens of the City of Scottsdale that the north area golf courses use raw CAP water and reclaimed wastewater to irrigate golf courses instead of groundwater.

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That Herbert R. Drinkwater, Mayor, is hereby authorized to execute on behalf of the City of Scottsdale Agreement No. 920004A providing for a Pipeline Capacity Agreement with Boulders Joint Venture reserving capacity in the Reclaimed Water Distribution System.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 19th day of December, 1994.

CITY OF SCOTTSDALE, a municipal
corporation

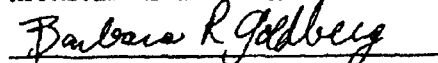
By:


Herbert R. Drinkwater, Mayor

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:


for Fredda J. Bisman, City Attorney

RESOLUTION NO. 7555

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO FIFTEEN OF THE RWDS PIPELINE CAPACITY AGREEMENTS SETTING FORTH CERTAIN TERMS AND CONDITIONS UNDER WHICH THE CITY WILL PROVIDE CONTINUED RECLAIMED WATER TO EACH RWDS USER.

On February 12, 1991, the City adopted Resolution No. 3372 authorizing construction of a Reclaimed Water Distribution System (RWDS); and

The Pipeline Capacity Agreements for RWDS customers are being amended to enable north area golf courses to participate financially in the design and construction of an expanded and improved Advanced Wastewater Treatment System (AWTS) and to enable them to reserve capacity in the expanded and improved system.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor is authorized to execute, on behalf of the City of Scottsdale, an amendment to each of 15 individual RWDS Pipeline Capacity Agreements that allow for cooperative financing of expansion and improvements to the Advanced Wastewater Treatment System (AWTS) at the Water Campus and to establish standards and a testing protocol for the sodium concentration within the Non-Potable Water provided to the golf courses. Those Agreements adopted by this Resolution are identified as follows:

1. Second Amendment to Agreement No. 1992-003-COS-A2 - Troon North Golf Club, LLC.
2. Second Amendment to Agreement No. 1995-158-COS-A2 - Whisper Rock Golf, LLC.
3. Second Amendment to Agreement No. 1992-006-COS-A2 - Whisper Rock Golf, LLC.
4. Second Amendment to Agreement No. 1994-111-COS-A2 - The Estancia Club, Inc.
5. Third Amendment to Agreement No. 1990-083-COS-A3 - Desert Mountain Properties, LP.
6. First Amendment to Agreement No. 1994-054-COS-A1 - JER/SGG Legend Trail, LLC.
7. First Amendment to Agreement No. 1996-127-COS-A1 - Troon Country Club, Inc.
8. First Amendment to Agreement No. 1994-093-COS-A1 - Troon North Golf Club, LLC.
9. First Amendment to Agreement No. 1993-155-COS-A1 - Terravita Golf Club, Inc.
10. First Amendment to Agreement No. 1994-096-COS-A1 - Grayhawk Golf, LLC.
11. First Amendment to Agreement No. 1994-044-COS-A1 - Grayhawk Golf, LLC.
12. Second Amendment to Agreement No. 1995-157-COS-A2 - Mirabel Golf Club, Inc.

 **COPY**


13. Second Amendment to Agreement No. 1992-004-COS-A2 - Wind P1 Mortgage Borrower, LLC.
14. First Amendment to Agreement No. 1992-002-COS-A1 - The Desert Highlands Association.
15. First Amendment to Agreement No. 1992-005-COS-A1 - DMB Associates, Inc.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 1st day of April, 2008.


ATTEST:

CITY OF SCOTTSDALE
an Arizona Municipal Corporation


By:


Carolyn Jagger
City Clerk

By:


Mary Manross
Mayor

APPROVED AS TO FORM:


Deborah W. Roberson
City Attorney

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE, Chairman
4 SANDRA D. KENNEDY
5 PAUL NEWMAN
6 BOB STUMP
7 BRENDA BURNS

Docket No. SW-02361A-08-0609

8 IN THE MATTER OF THE APPLICATION
9 OF BLACK MOUNTAIN SEWER
10 CORPORATION, AN ARIZONA
11 CORPORATION, FOR A
12 DETERMINATION OF THE FAIR VALUE
13 OF ITS UTILITY PLANT AND PROPERTY
14 AND FOR INCREASES IN ITS RATES
15 AND CHARGES FOR UTILITY SERVICE
16 BASED THEREON

17 **Direct Testimony**

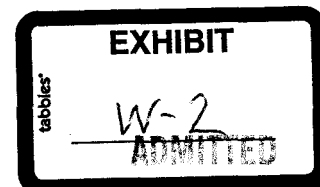
18 **of**

19 **Tom McCahan**

20 **on behalf of Wind P1 Mortgage Borrower, L.L.C.**

21 **d/b/a The Boulders Resort and Golden Door Spa**

22 **March 16, 2012**



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1 **Q1. Please state your name, address and occupation.**

2 A1. My name is Tom McCahan. My business address is 34361 N. Tom Darlington Drive,
3 Carefree, Arizona. I am employed by Waldorf Astoria LLC, the manager of The
4 Boulders Resort and Golden Door Spa (the "Resort"). I am the Director of Club
5 Operations for the Resort.

6 **Q2. Please describe the purpose of your testimony.**

7 A2. The purpose of my testimony is to describe my contact with Boulders Homeowners
8 Association and efforts to find a solution for the Boulders Golf Club's water supply if the
9 Black Mountain Sewer Corporation ("Black Mountain") wastewater treatment plant
10 should close before the expiration of the Effluent Delivery Agreement in March 2021.

11 **Q3. The Resort became aware at some point that Black Mountain Sewer Corporation**
12 **was proposing to close the Boulders wastewater treatment plant?**

13 A3. Yes, In about November 2009, I received a call from Les Peterson with the Boulders
14 Homeowners Association, who told me that the Association was going ask the Arizona
15 Corporation Commission to get the plant closed.

16 **Q4. Have you been involved with the efforts described by Susan Madden and Dean**
17 **Hunter to research alternative water supply options?**

18 A4. Yes, all three of us have worked on the issue.

19 **Q5. Can't the Resort simply order more RWDS water from the City of Scottsdale?**

20 A5. The Resort already gets most of its golf course water supplies through Scottsdale's
21 RWDS pipeline, so we considered whether additional RWDS water might be available.
22 Currently, however, the RWDS capacity is all tied up with other users. The Resort
23 through its agreement is limited to 1.25 MGD of pipeline capacity. The peak water use
24 times are the same for other golf courses on the RWDS pipeline too, so there simply is no
25 more physical capacity in the pipeline to take greater deliveries during peak use times
26 without impacting other users. If another golf course user gives up its RWDS capacity,
27 then it may be possible to purchase the capacity. During negotiations, we heard that
28

1 Scottsdale might be planning to increase the RWDS pipeline capacity, but we determined
2 the City has no plans to do so in the area of the Resort in the next ten years.

3 **Q6. What about the potential solution suggested by Black Mountain during the rate case**
4 **hearing regarding purchasing water from Desert Mountain?**

5 A6. The potential alternative identified by Black Mountain at the November 18, 2009, hearing
6 would require that another RWDS pipeline capacity holder, Desert Mountain Club, Inc.
7 ("Desert Mountain"), agree to release a portion of its RWDS pipeline capacity to the
8 Resort. The Resort has investigated the viability of this option and understands the
9 following: In order for Desert Mountain to release a portion of its capacity in the RWDS
10 pipeline, (which is Desert Mountain's lower cost golf course water supply), Desert
11 Mountain would likely require the Resort to pay the difference in cost between Desert
12 Mountain's more expensive alternative water supply delivered to Desert Mountain
13 through Scottsdale's Irrigation Water Delivery System ("IWDS") pipeline and its RWDS
14 water. IWDS water is currently roughly double the cost per acre-foot of RWDS water.
15 The Resort does not have physical access to the IWDS pipeline, but through this sort of
16 paper exchange arrangement could pay Desert Mountain to use IWDS water instead of
17 RWDS water. The City of Scottsdale would need to agree to this sort of exchange too.
18 The Resort understood that Desert Mountain would require an upfront payment of
19 approximately \$10 million for this potential solution, although it is possible that number
20 could change. The purchase would also likely require the Resort to pay future monetary
21 obligations associated with construction of infrastructure required for the IWDS supply.
22 In summary, in order to make such an arrangement work, both Desert Mountain and the
23 City of Scottsdale would have to be willing to enter into the proposed exchange
24 agreement, and the Resort would need to pay up to \$10 million upfront, followed by
25 higher water rates that are roughly double the Resort's current RWDS rates, plus
26 unknown future infrastructure obligations.

27 **Q7. Does this conclude your direct testimony?**

28 A7. Yes.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE, Chairman
4 SANDRA D. KENNEDY
5 PAUL NEWMAN
6 BOB STUMP
7 BRENDA BURNS

Docket No. SW-02361A-08-0609

7 IN THE MATTER OF THE APPLICATION
8 OF BLACK MOUNTAIN SEWER
9 CORPORATION, AN ARIZONA
10 CORPORATION, FOR A
11 DETERMINATION OF THE FAIR VALUE
12 OF ITS UTILITY PLANT AND PROPERTY
13 AND FOR INCREASES IN ITS RATES
14 AND CHARGES FOR UTILITY SERVICE
15 BASED THEREON

13 **Direct Testimony**

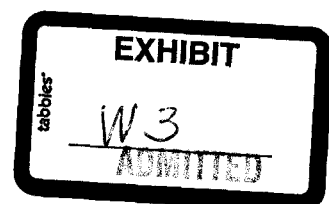
14 **of**

15 **Dean Hunter**

16 **on behalf of Wind P1 Mortgage Borrower, L.L.C.**

17 **d/b/a The Boulders Resort and Golden Door Spa**

18 **March 16, 2012**



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1 **Q1. Please state your name, address and occupation.**

2 A1. My name is Dean Hunter. My business address is 34361 N. Tom Darlington Drive,
3 Carefree, Arizona. I am employed by Waldorf Astoria LLC, the manager of The
4 Boulders Resort and Golden Door Spa (the "Resort"). I am the Golf Course
5 Superintendent for the Resort.

6 **Q2. Please describe the purpose of your testimony.**

7 A2. The purpose of my testimony is to describe my efforts to find a solution for the Resort's
8 golf course water supply if the Black Mountain Sewer Corporation ("Black Mountain")
9 wastewater treatment plant should close before the expiration of the Effluent Delivery
10 Agreement in March 2021.

11 **Q3. How much of the Resort's golf course water supply is provided by Black Mountain.**

12 A3. Currently, about 15% of our annual golf course water supply comes from the Black
13 Mountain treatment plant. We purchase approximately 130 to 135 acre-feet per year
14 from Black Mountain.

15 **Q4. Please briefly describe the alternatives that were considered or are still being**
16 **considered.**

17 A4. As Susan Madden testified, we considered a number of options. I will testify regarding
18 potential conservation savings and additional water storage options.

19 **Q5. Is it possible for the golf courses to operate without the Black Mountain water**
20 **supply?**

21 A5. When we learned that we might be losing the treatment plant water supply, I was curious
22 to see if the Resort might be able to operate the two golf courses with only the amount
23 RWDS water we get from Scottsdale. We researched our historical golf course water use
24 and conducted our own internal study by actually stopping some of our water use to see if
25 it could be done. Based upon that experiment, I concluded that the Resort could not
26 operate at the same level as we currently operate without the treatment plant water.

1 A8. Yes. We considered not overseeding one or both golf courses in the winter. Currently,
2 each year the fairways in both courses are overseeded, and the rough in one course is
3 overseeded. We currently alternate overseeding the rough in each course every other
4 year. The only way we could continue to operate without the Black Mountain water is to
5 stop overseeding all the roughs on both courses every year and all the fairways on one or
6 possibly both courses every year. This would leave one or both golf courses brown for
7 several months each winter. In addition, the reduction of water demand in the winter
8 does not necessarily eliminate the need to apply additional water in the spring as the
9 Bermuda grass is reestablished, so the turf playing quality could suffer in the spring too.
10 We expect that allowing the turf to go brown during the peak tourist season in the winter
11 months would have a significant if not devastating impact on the Resort's ability to attract
12 seasonal vacation golfers, and may even cause us to lose local golf club members to
13 competing courses. In general, such changes will not be good for the Resort's business
14 or the neighboring property owners, who expect to be located next to a world-class
15 Resort.

16 **Q9. Were there any other alternatives you considered?**

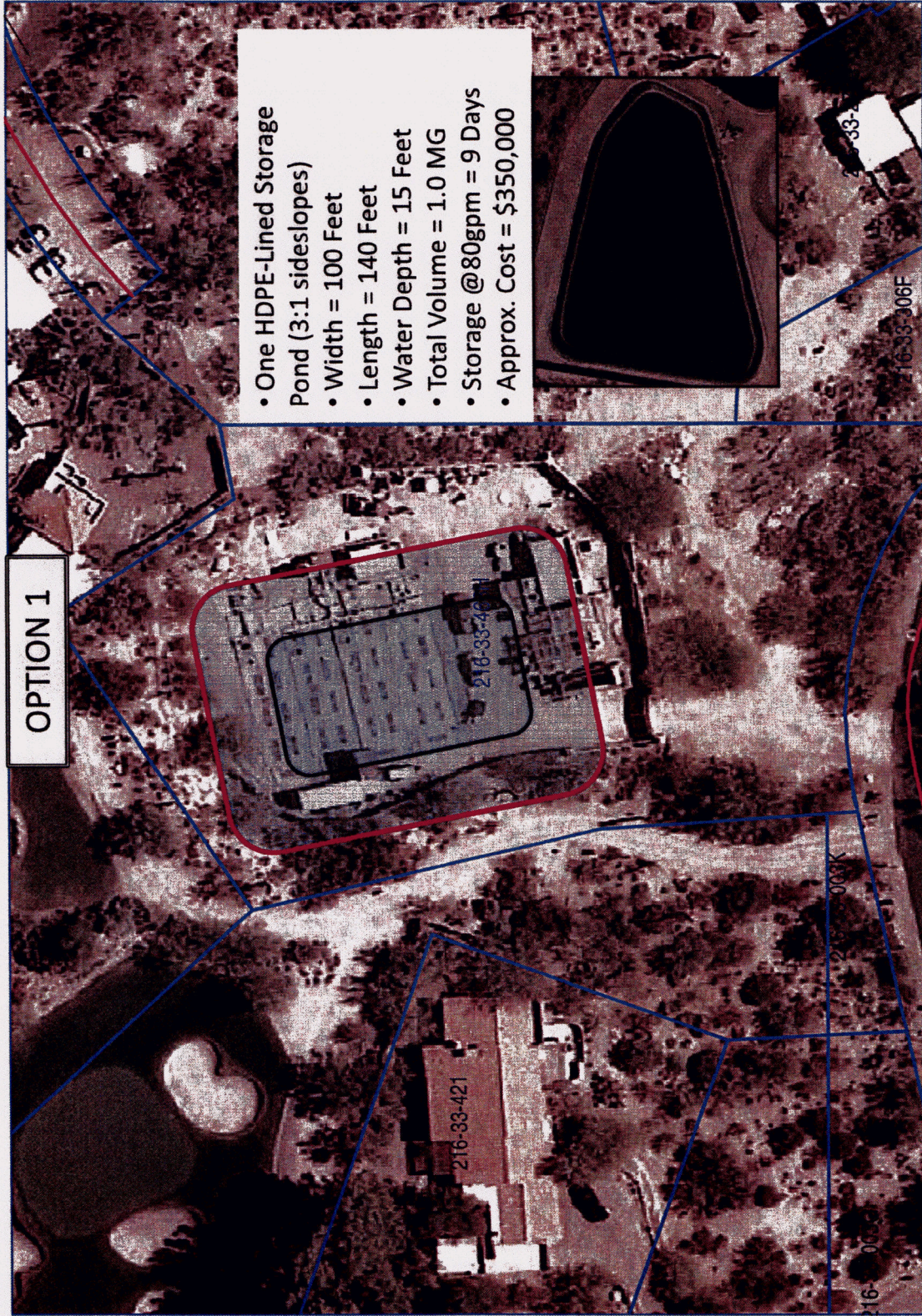
17 A9. The Resort considered whether it could increase golf course lake storage sufficiently to
18 take extra RWDS water during non-peak times and stretch it through the peak usage
19 times, but concluded that is not a feasible solution. We determined we would need a very
20 large pond with a 28-day supply of water. Such a pond, even without considering
21 evaporation losses, would need to have a surface area of roughly 30,400 square feet,
22 approximately two-thirds the size of a football field. Some of the engineering sketches
23 we reviewed are attached as Exhibit A to give an idea of the size. The pond would have
24 significant evaporation losses, and we expect there would likely be significant odor issues
25 near the golf course and homes as the pond was emptied and the sides of the pond were
26 exposed to air. In addition, the site we identified for such a large pond was located
27 downhill from the irrigation lake, so there would be additional infrastructure and costs to
28

1 pump the stored water uphill. A related option considered briefly was offsite
2 underground water storage of RWDS water or possibly another source of water, but the
3 well infrastructure and permitting and pumping costs will likely be quite high, and this
4 sort of option would require further study by a hydrologist. We understand that another
5 RWDS user may challenge the Resort if the Resort takes extra RWDS water for storage
6 purposes during non-peak times. I also researched briefly whether it might be possible
7 to haul water by truck to fill the lakes, but the cost was prohibitive at roughly \$780,000
8 more per year than our current cost, and would have resulted in quite a lot of new truck
9 traffic near the Resort for approximately six months during each year.

10 **Q10. Does this conclude your direct testimony?**

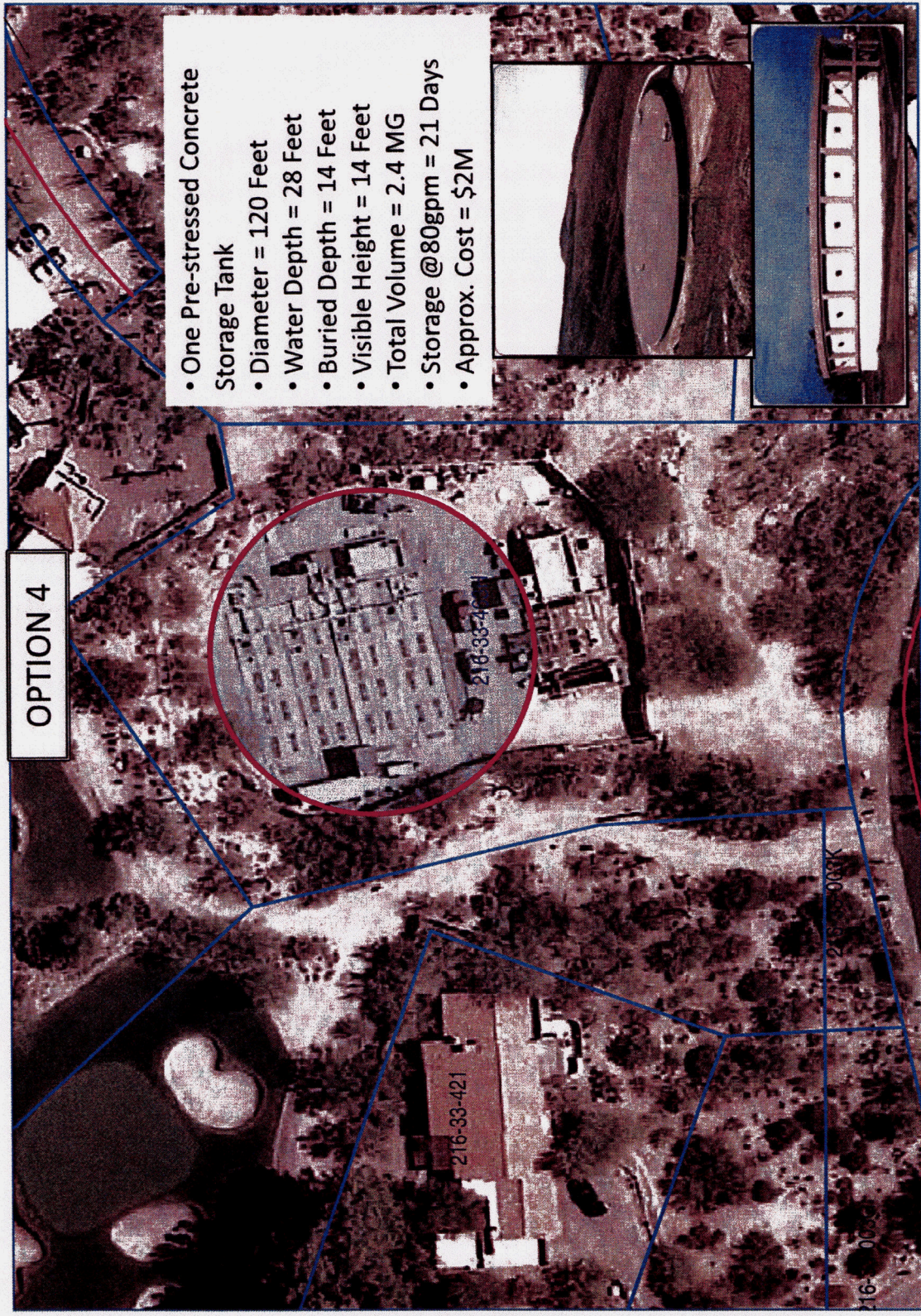
11 **A10. Yes.**

A









OPTION 4

- One Pre-stressed Concrete Storage Tank
- Diameter = 120 Feet
- Water Depth = 28 Feet
- Buried Depth = 14 Feet
- Visible Height = 14 Feet
- Total Volume = 2.4 MG
- Storage @80gpm = 21 Days
- Approx. Cost = \$2M







South Lake Excavation



1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE, Chairman
4 SANDRA D. KENNEDY
5 PAUL NEWMAN
6 BOB STUMP
7 BRENDA BURNS

Docket No. SW-02361A-08-0609

7 IN THE MATTER OF THE APPLICATION
8 OF BLACK MOUNTAIN SEWER
9 CORPORATION, AN ARIZONA
10 CORPORATION, FOR A
11 DETERMINATION OF THE FAIR VALUE
12 OF ITS UTILITY PLANT AND PROPERTY
13 AND FOR INCREASES IN ITS RATES
14 AND CHARGES FOR UTILITY SERVICE
15 BASED THEREON

13 **Responsive Testimony**

14 **of**

15 **Dean Hunter**

16 **on behalf of Wind P1 Mortgage Borrower, L.L.C.**

17 **d/b/a The Boulders Resort and Golden Door Spa**

18 **April 6, 2012**

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EXHIBIT

tabbles

W-4

ADMITTED

Executive Summary

Dean Hunter is the Golf Superintendent for The Boulders Resort and Golden Door Spa (the "Resort"). Mr. Hunter responds to Mr. Sorenson's testimony and provides clarification regarding the amount of replacement water needed if the Black Mountain water is no longer available. Mr. Hunter explains that, if the Black Mountain plant is closed, the Resort will need a minimum replacement water supply of approximately 11 acre-feet per month for six months of the year. The addition of water storage capacity for this quantity of water and storage time is not workable, and the Resort would still need an additional water supply to fill the large storage facilities.

1 **Q1. Please state your name, address, and occupation.**

2 A1. My name is Dean Hunter. My business address is 34361 N. Tom Darlington Drive,
3 Carefree, Arizona. I am employed by Waldorf Astoria LLC, the manager of The
4 Boulders Resort and Golden Door Spa (the "Resort"). I am the Golf Course
5 Superintendent for the Resort.

6 **Q2. Have you previously testified before the Arizona Corporation Commission?**

7 A2. Yes, I provided written Direct Testimony in this matter on March 16, 2012.

8 **Q3. Please describe the purpose of your responsive testimony.**

9 A3. The purpose of my testimony is to respond to Mr. Sorenson's statements regarding the
10 Resort's evaluation of storage alternatives, and respond to Mr. Sorenson's description of
11 the intermittent plant operation alternative.

12 **Q4. Mr. Sorenson testified in his March 16, 2012 Direct Testimony that Black Mountain**
13 **provided storage information to the Resort, but never heard anything further about**
14 **that possible alternative. Why has storage not been pursued?**

15 A4. We have not identified a workable storage solution. The Resort's investigation of the
16 various alternatives has been a learning process. Early in our discussions, we thought that
17 we might be able to do without Black Mountain's effluent if the Resort had additional
18 storage on the property to get through just two months of the year, and that is roughly
19 when we looked at the options provided by Black Mountain's engineer. We were looking
20 at at least a 28-day storage option to cover each of those two months, and identified very
21 large storage basin with 28-day storage. Now that we have studied the historic water
22 supply needs more, however, we understand that we would still likely experience periodic
23 shortages even with the additional 28-day storage facility due to the variability in our
24 watering needs from May through October. In other words, we would have instances
25 where we would empty a new large storage facility, but the Resort would not have access
26 to water to fill the facility to get through the next period. In order to make the potential
27 for shortages manageable, we now believe that the Resort will need a consistent
28

1 minimum of six months of additional water supply availability, approximately 11 acre-
2 feet per month, in addition to our existing Scottsdale RWDS pipeline capacity. The
3 storage capacity required to cover the longer period would be just huge, and we would
4 still have all those other concerns such as where we get the additional water supply,
5 evaporation, additional pumping and aeration costs, and smells and other management
6 concerns associated with maintaining the storage facilities.

7 **Q5. Mr. Sorenson also testified that Black Mountain reviewed possibly keeping the**
8 **Black Mountain wastewater treatment plant open for only two months a year.**
9 **Would this work from the Resort's perspective?**

10 A5. No. As I stated in the previous response, we will need access to water in addition to our
11 RWDS water for six months each year, so the plant would have to be open for as long as
12 six months each year.

13 **Q6. Does this conclude your responsive testimony?**

14 A6. Yes.

**BLACK MOUNTAIN SEWER CORPORATION
DOCKET NO. SW-02361A-08-0609
RESPONSE TO FIRST SET OF DATA REQUESTS BY
WIND P1 MORTGAGE BORROWER, LLC, dba THE BOULDERS RESORT**

February 14, 2012

Response provided by: Greg Sorensen
Title: Vice President of Delivery Services
Company: Liberty Water
Address: 12725 W. Indian School, #D-101
Avondale, AZ 85392

Company Response Number: 1.18

Q. Is there currently a sufficient downstream collection system line capacity and flow-through capacity to the Scottsdale plant sufficient to accommodate the additional 120,000 gpd from the current treatment plant as described on page 42 in Decision No. 71865? If not, please describe the changes that will be needed to satisfy this condition.

RESPONSE: Please see attached. Should plant closure and removal go forward, the Company may need to have this analysis updated.





MCBRIDE ENGINEERING SOLUTIONS, INC.
6100 W. Gila Springs Place, Suite 7
Chandler, AZ 85226

Principal
Brian P. McBride, P.E.

June 30, 2009

Brian Hamrick, PE
Senior Project Manager
Algonquin Water Services, LLC
12725 W. Indian School Rd, Suite D101
Avondale, AZ 85392

Re: Black Mountain Sewer Corporation WRF Site and Sewer Investigations
Options for Collection System Modifications to Accommodate Removal of the WRF

Dear Brian:

We have completed our preliminary evaluation of the Black Mountain Sewer Corporation (BMSC) collection system for the feasibility of rerouting the existing sewers for the purpose of removing the water reclamation facility (WRF) in the Boulders residential community. We examined four possible options for diverting sewage around the WRF site and developed planning level cost estimates for three feasible options. The goal in developing each option was to examine the hydraulic capacity using available data to determine which sections of the sewers were more likely to require upsizing to carry the additional flow of sewage without surcharging.

Each bypass sewer option evaluated share some common elements. The common elements are:

- a) Redirecting flow from Staghorn Drive around the plant,
- b) Relaying the sewer in Quartz Valley to eliminate the lift station,
- c) Construction of a new sewer between manholes A11 and A7,
- d) Installation of an air jumper between manholes D1 and D1-2.

These elements are further described as follows:

a) Redirecting the Staghorn Drive sewer

The sewer in Staghorn Drive is the only sewer that flows into the plant from the east. This sewer was the original influent sewer for the plant until the headworks modifications in the early 1990's. The sewer has over 20-ft of fall from the intersection of Boulder Drive to the east boundary of the plant. In order to remove the WRF this sewer will need to be re-routed. Two options appear to be feasible for rerouting this sewer, either by a gravity sewer around the plant or with lift station and force main to pump sewage to the sewer in Boulder Drive. For purposes of this evaluation we assumed a new sewer would be constructed along the perimeter of the plant site in lieu of adding a lift station and force main.

b) Relaying the sewer in Quartz Valley

The sewer in Quartz Valley originally drained into manhole A11, within the intersection of Quartz Valley and Boulder Drive. A survey completed for the hydraulic analyses

June 30, 2009

performed by MES, showed the sewer had a negative slope which combined with the turbulence within manhole A11 caused the sewer to stagnant. A new sewer and grinder pump lift station were installed to separate the Quartz Valley sewer from the main sewer into the WRF in 2007. To remove the WRF the Quartz Valley sewer will need to be redirected into the new bypass sewer between manholes A11 and A7.

c) New Sewer Between Manholes A11 and A7

Manhole A11 is the upstream junction manhole for the WRF. The existing sewer within Boulder Drive drops two feet and turns 90-degrees north flowing into the WRF bar screen manhole. Manhole A7 is the first manhole of the existing bypass downstream of the overflow junction manhole inside the WRF. In order to remove the WRF these two manholes must be connected with a new sewer that will bypass the plant. We anticipate that the construction of this new sewer will be the most difficult aspect of the sewer modifications because the depth of the new sewer and the potential for encountering rock.

d) Air Jumper between Manholes D1 and D1-2

Manholes D1 and D1-2 are located on a flat sloped section of the 12-inch bypass sewer which is immediately downstream of steep sloped section of the sewer. It is very likely there is a hydraulic jump within this reach which could surcharge the pipe during peak flows. Since the 12-inch bypass sewer should be adequate to carry the flow, installation of an air jumper would keep odors from being off gassed by the hydraulic jump.

Our planning level estimate for the costs associated with the common elements is **\$241,200**, which must be added to the unique costs for each sewer option.

Bypass Sewer Options

The collection system options evaluated for bypassing the WRF were the following:

1. East Bypass Sewer
2. South Bypass Sewer (original alignment)
3. West Bypass Sewer
4. Revised South Bypass Sewer

Description of the Options

The following paragraphs describe each of the evaluated bypass sewer options and include their planning level cost estimates. To assist in field locating existing manholes, sketches of the bypass sewer options were superimposed over the collection system map prepared by Entellus. The sketches, along with the Maricopa County GIS interactive maps, were used for estimating preliminary quantities for the planning level costs. Copies of each sketch are attached.

1. East Bypass Sewer – the concept for this option involves constructing a new bypass sewer to intercept and divert flow from the Commercial Lift Station force mains to the eastern boundary of the Boulders residential community. The new bypass sewer would begin in the intersection of Boulder Drive and Ironwood Road, near manhole A23 which is the current discharge manhole for the force mains. The new sewer would head east following the alignment of Ironwood Road to Westland Road where it would turn west to Scottsdale Road and intercept the existing 15-inch bypass sewer. The concept would require a totally new sewer since the existing sewers along Ironwood Road are

not connected. This option was dropped after the initial field visit confirmed the new sewer would have to cross a large wash at its upstream end which would force the sewer to be unusually deep for the remainder of its alignment in Ironwood Road. The anticipated depth of the new sewer (approximately 25-ft deep) made it an unfeasible option; as a result no planning level cost estimate was developed for this option. **Unfeasible.**

2. South Bypass Sewer — this option involves upgrading the existing bypass sewer along its flat slope sections to improve its hydraulic capacity. The existing bypass sewer flows south from the plant along the golf course driving range crossing into the golf course clubhouse parking lot where it turns southwesterly crossing somewhere between the clubhouse and tennis courts. Once past the parking lot the exact location of the bypass sewer is unknown but it appears to cross the golf course fairway. The sections of the existing sewer that appear to be under sized hydraulically are the reaches between manholes A4 and A3, A1-1 to D25, D22 to D21 and D20 to D19. Approximately 1,800 feet of pipe would need to be upsized to increase its hydraulic capacity, the planning level estimate for the south bypass sewer option is **\$725,800.**
3. West Bypass Sewer – this option involves constructing a new sewer that would intercept the existing bypass sewer near manhole A2 then head west along Clubhouse Drive until it intercepts manhole D18-7. The west bypass sewer option eliminates the need to disturb the sewer beneath the tennis courts and the golf course fairways. The major drawback of this alignment is that it would increase the flow of sewage directly in front of the Boulders resort hotel. There was no information on the manholes for the existing D18 sewer, so the planning level cost estimate assumes that sewer D18 between manholes D18-7 through D18-1 would require upsizing to improve the hydraulic capacity. The west sewer bypass would require approximately 1200-ft of new sewer and 1300-ft of replacement sewer for an estimated cost of **\$801,700.**
4. Revised South Bypass Sewer – this option developed as a result of a second field visit with representatives from D.L. Norton General Contracting. The revised south bypass sewer begins, as the west bypass sewer, by intercepting the existing bypass sewer within the golf course clubhouse parking lot near manhole A2. The new sewer would then travel southwesterly along Clubhouse Drive to Boulder Parkway where it would turn south along Boulder Parkway and intersect the existing bypass sewer in the vicinity of manhole N1. The primary advantages of this alignment is that it would be a completely new sewer within an existing roadway so it could be constructed dry - no bypass pumping and it would avoid disturbing the clubhouse, tennis courts, golf course and resort. It also appears that this alignment would a shorter run than the existing bypass sewer. Using the contour data from the Maricopa County interactive maps the alignment appears to have a naturally occurring fall between 1% and 2% which would permit construction of a shallow sewer (~5-ft deep). The revised south bypass sewer would require approximately 1500-ft of new sewer and 550-ft of replacement sewer for an estimated cost of **\$561,800.**

The Revised South Bypass Sewer option (4) not only has the lowest planning level cost estimate of the options evaluated but appears to be the best option to address potential odor issues. When the costs for the common elements (\$241,200) are accounted for the estimated total for option 4 is **\$803,000.**

June 30, 2009

At our request D.L. Norton General Contracting also reviewed sketches of each option and prepared a planning estimate for what they considered the most feasible of the options, which was the revised south bypass sewer option (4). DL Norton's estimate for the option 4 including common elements is ~~\$942,004~~, which is a difference of \$139,000 between the two planning level estimates. DL Norton is conservatively assuming that all excavation for the new sewer in Clubhouse Drive and Boulder Parkway would be in rock and would be approximately 9-ft deep. Which MES believes are very conservative assumption and why we've chosen to include both planning level estimates associated with the revised south bypass sewer option (4).

Recommendations

If AWS decides to pursue removal of the WRF, the recommended option for bypassing is the revised south bypass sewer (4). The revised south bypass sewer would be the least disruptive to residents and the resort, the least expensive to construct and could be constructed dry minimizing the need for bypass pumping.

Information Deficiencies

The manhole data contained within the 2008 Wastewater Master Plan report prepared by Brown and Caldwell (BC) was used to assist in evaluating the hydraulic capacity of the bypass sewer options. However there are several gaps in the information contained within the wastewater master plan report. The BC report only contains information for selected manholes within the service area. There were gaps in the data encountered for each of the four bypass sewer options. When data gaps were encountered, the Maricopa County Assessors Office interactive maps and available record drawings were used to estimate rim elevations and distances between manholes.

The table below indicates the gaps in manhole data found along the alignments for the bypass sewer options. If AWS chooses to pursue the option removing the WRF, the manholes and pipe lengths in the following areas will need to be surveyed prior to commencing design so that an accurate hydraulic analysis can be performed.

Table 1
Additional Survey Data Required Prior to Design of Sewer Modifications

Closest Street Intersection	Original MH Identifier
Boulder Drive outside of the WRF – first bypass MH	A7
Sewer crosses Boulder Dr follows GC	A6 thru A3
MHs are in parking lot of GC clubhouse	A2, A2a and A2b
Sewer crosses fairway	A1 to D25
Sewer heads west along a large wash	D24 thru D18
Sewer in Clubhouse Drive – it flows into sewer in front of resort	D18-7 thru D18-1
Beginning of 12-in sewer south of resort, including the parallel 12-inch sewer	D18 thru D1
Possible sewer bypass – its unclear why this was done	J23-1 thru J23-1.3
Modifications to the 15-in sewer along Scottsdale Road	J26-6 thru J26-9, U1 and T1-2
Beginning of 18-in sewer with sewer tie-in from east along Dove Valley Rd	U3 thru U5 and T1-5 thru T1-7

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The manhole identification numbers in the table above are from the collection system master plan map prepared by Entellus.

In addition to the topographic survey mentioned above, AWS should also monitor flows in the following locations to confirm the capacity requirements for the bypass sewer.

Flow monitoring locations

- Immediately downstream of the golf course clubhouse at one of the A2 manholes or A1
- Immediately downstream of the resort at Manhole D18-2 or D16, if D18-2 is not possible

Despite the challenges presented this was a very interesting evaluation and we thank you for the opportunity to be of service. Please feel free to call us if you have any questions regarding the evaluation or cost estimates.

Sincerely,



Debra C. McGrew, PE
Associate
McBride Engineering Solutions

**BLACK MOUNTAIN SEWER CORPORATION
DOCKET NO. SW-02361A-08-0609
RESPONSE TO FIRST SET OF DATA REQUESTS BY
WIND P1 MORTGAGE BORROWER, LLC, dba THE BOULDERS RESORT**

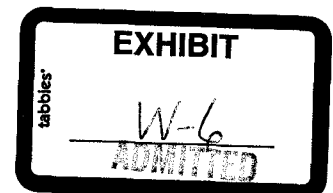
February 14, 2012

Response provided by: Greg Sorensen
Title: Vice President of Delivery Services
Company: Liberty Water
Address: 12725 W. Indian School, #D-101
Avondale, AZ 85392

Company Response Number: 1.12

Q. Please describe any odor or noise complaints received by the Company that were not already filed in this docket relating to the WWTP since Decision 71865 was issued.

RESPONSE: With respect to complaints filed with the Commission and other agencies, these records may be obtained directly from them. In addition, please see the attached complaint log of customers that directly contacted the Company regarding odor and/or noise concerns between 9/1/10 (date of last decision) and 2/12/12. Additionally, the Company has had contact with Mr. Wytko, a customer complaining of noise experienced at his home, which he believes originates from the WWTP. This is an active investigation. Finally, a lawsuit in Maricopa County Superior Court was filed against BMSC in January 2011, Case No. CV2011-004077.



BLACK MOUNTAIN SEWER COMPANY			
Complaints to Company 9/1/10 - 2/12/12			
2012			
12-Jan	6028 E Lanquid Ln	Odor	Chlorine not feeding / got it going
13-Jan	6230 E Villa Cassadra	Odor	Did not detect any odor/added vanilla enzyme
10-Jan	1054 Boulder Dr	Odor	Did not detect any odor/added vanilla enzyme/house had been vacant couple wks
2011			
12-Sep	7462 Saoring Eagle Way	Odor	Did not detect any odor. Customer not home. Returned next day - did not detect any odor.
14-Sep	7078 Stagecoach Pass	Odor	Manholes were flowing normally.
24-Aug	7234 E Cave Creek Rd	Odor	Manholes were flowing normally. Residents of apartment concerned that manhole may explode due to gases.
29-Jul	37030 Dream St	Odor	Manholes were flowing normally. Advised customer to run water in bathrooms not used regularly.
			Customer requested test to ensure his property was connected to sewer service - confirmed. Added vanilla enzyme.
1-Jul	1053 Boulder Dr	Odor	Did not detect any odor. Customer mentioned odor was in A/C unit. Referred to contact plumber.
20-Jun	1053 Boulder Dr	Odor	Manholes flowing normally. Customer wanted smoke test done. Referred to contact plumber.
16-Jun	7687 E Black Mtn Rd	Odor	Manholes flowing normally. Added vanilla enzyme. Advised customer we would seal the manholes near her house.
9-Jun	7431 E Sundance Trl, Unit 603	Roaches	Property HOA owned. Added Dead End chemicals to manhole across from complex. Notified customer - HOA responsibility inside complex
23-May	5825 E Leisure Ln	Roaches	Added chemicals in manhole
29-Apr	6049 E Mountain Ct	Odor	Customer new to area and concerned about odor/possible explosion from gases. No odor detected. Manholes flowing normally.
			Added vanilla enzyme.
26-Apr	Staghorn Lane (near WWTP)	Odor	Boulder's HOA reported odor from WWTP. Doing routine cleaning at plant - some of hatch lids were opened. Nothing broken at plant.
			Finished cleaning & closed all hatches. Drove area and did not detect odors
22-Feb	Golf Course behind WWTP	Odor	Reported odor from previous day. Logger indicates normal range. Advised customer to call when the odor occurs so we can investigate immediately.
21-Feb	34668 Sunset Trail	Leak	Leak detected. Called Roto Rooter for emergency repair. Called Bluestake to mark lines. Pro-tec called. Repair completed during the night and in to the next morning.
2-Feb	Ridgeview Lift Station	Leak	Leak reported at Lift Station was actually WATER Irrigation system. Contacted HOA to fix their leak.
28-Jan	1702 Staghorn Ln	Odor	No odors detected. Loggers registered 0.00ppm. Renters stated it was usually late afternoon/early evening. Owner stated it was all the time.
14-Jan	1702 Staghorn Ln	Odor	No odor detected. Checked manhole & found solids building up due to only 7 homes connected on this line. Flushed line and added vanilla enzyme.
14-Jan	1715 Staghorn Ln	Odor	Roots in line where service connects to utility. Manholes were flowing normally - resealed.
14-Jan	35050 Chino Ln	Odor	No odor detected. Checked manholes - flowing normally. Increased chlorine a quarter turn at Sentinel Rock lift station.
2010			
8-Dec	Manhole near M&I Bank - Scottsdale Rd	Odor	Did not detect any odors. Checked manhole - flowing normally. Did detect City of Scottsdale manhole with concrete cracked - may be the manhole that City of Scottsdale operator was reporting. Will follow up.
17-Nov	1043 Boulder Dr	Odor	Reported odors on Boulder Pass & Boulder Dr. Talked to two employees at the plant previously but did not get resolution. Checked for odors - did not detect any. Checked manholes & flowing normally. Resealed manholes.
3-Nov	7828 Carfree Estates	Odor	Responding to report of odor in area of Carfree Estates. Customer at this address was not aware that someone would be coming out to check manholes. Flow was normal & no odor detected. Customer had complaint about rates but was referred to call business office.
20-Oct	36232 Peaceful Place	Leak	Leak determined to be on customer's side. Customer to contact plumber.
30-Sep	1085 E Boulder Dr	Blockage	Customer stated plumber indicated the blockage was utility. Unable to determine plumber that gave out this info. No blockage on utility side

[illegible]

Department of Environmental Quality – Water Pollution Control

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROLARTICLE 1. AQUIFER PROTECTION PERMITS –
GENERAL PROVISIONS

Section	
R18-9-101.	Definitions
R18-9-102.	Facilities to which Articles 1, 2, and 3 Do Not Apply
R18-9-103.	Class Exemptions
R18-9-104.	Transition from Notices of Disposal and Groundwater Quality Protection Permitted Facilities
R18-9-105.	Permit Continuance
R18-9-106.	Determination of Applicability
R18-9-107.	Consolidation of Aquifer Protection Permits
R18-9-108.	Public Notice
R18-9-109.	Public Participation
R18-9-110.	Inspections, Violations, and Enforcement
R18-9-111.	Repealed
R18-9-112.	Repealed
R18-9-113.	Repealed
R18-9-114.	Repealed
R18-9-115.	Repealed
R18-9-116.	Repealed
R18-9-117.	Repealed
R18-9-118.	Repealed
R18-9-119.	Repealed
R18-9-120.	Repealed
R18-9-121.	Repealed
R18-9-122.	Repealed
R18-9-123.	Repealed
R18-9-124.	Repealed
R18-9-125.	Repealed
R18-9-126.	Repealed
R18-9-127.	Repealed
R18-9-128.	Repealed
R18-9-129.	Repealed
R18-9-130.	Repealed
Appendix I.	Repealed

ARTICLE 2. AQUIFER PROTECTION PERMITS –
INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

Section	
R18-9-A201.	Individual Permit Application
R18-9-A202.	Technical Requirements
R18-9-A203.	Financial Requirements
R18-9-A204.	Contingency Plan
R18-9-A205.	Alert Levels, Discharge Limitations, and AQLs
R18-9-A206.	Monitoring Requirements
R18-9-A207.	Reporting Requirements
R18-9-A208.	Compliance Schedule
R18-9-A209.	Temporary Cessation, Closure, Post-closure
R18-9-A210.	Temporary Individual Permit
R18-9-A211.	Permit Amendments
R18-9-A212.	Permit Transfer
R18-9-A213.	Permit Suspension, Revocation, Denial, or Termination
R18-9-A214.	Requested Coverage Under a General Permit

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

Section	
R18-9-B201.	General Considerations and Prohibitions

R18-9-B202.	Design Report
R18-9-B203.	Engineering Plans and Specifications
R18-9-B204.	Treatment Performance Requirements for a New Facility
R18-9-B205.	Treatment Performance Requirements for an Existing Facility
R18-9-B206.	Treatment Performance Requirements for Expansion of a Facility

ARTICLE 3. AQUIFER PROTECTION PERMITS –
GENERAL PERMITS

PART A. GENERAL PROVISIONS

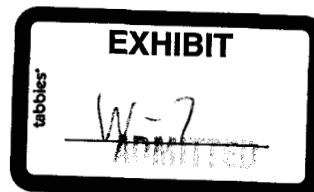
Section	
R18-9-A301.	Discharging Under a General Permit
R18-9-A302.	Point of Compliance
R18-9-A303.	Renewal of a Discharge Authorization
R18-9-A304.	Notice of Transfer
R18-9-A305.	Facility Expansion
R18-9-A306.	Closure
R18-9-A307.	Revocation of Coverage Under a General Permit
R18-9-A308.	Violations and Enforcement For On-site Wastewater Treatment Facilities
R18-9-A309.	General Provisions for On-site Wastewater Treatment Facilities
R18-9-A310.	Site Investigation for Type 4 On-site Wastewater Treatment Facilities
R18-9-A311.	Facility Selection for Type 4 On-site Wastewater Treatment Facilities
R18-9-A312.	Facility Design for Type 4 On-site Wastewater Treatment Facilities
R18-9-A313.	Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities
R18-9-A314.	Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities
R18-9-A315.	Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities
R18-9-A316.	Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities
R18-9-A317.	Nitrogen Management Area

PART B. TYPE 1 GENERAL PERMITS

Section	
R18-9-B301.	Type 1 General Permit

PART C. TYPE 2 GENERAL PERMITS

Section	
R18-9-C301.	2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated
R18-9-C302.	2.02 General Permit: Intermediate Stockpiles at Mining Sites
R18-9-C303.	2.03 General Permit: Hydrologic Tracer Studies
R18-9-C304.	2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded
R18-9-C305.	2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System
R18-9-C306.	2.06 General Permit: Fish Hatchery Discharge to a Perennial Surface Water



PART D. TYPE 3 GENERAL PERMITS

Section

- R18-9-D301. 3.01 General Permit: Lined Impoundments
 R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities
 R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes
 R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites
 R18-9-D305. 3.05 General Permit: Disposal Wetlands
 R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites
 R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

PART E. TYPE 4 GENERAL PERMITS

Section

- R18-9-E301. 4.01 General Permit: Sewage Collection Systems
 R18-9-E302. 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E303. 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E304. 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E305. 4.05 General Permit: Gravelless Trench, Less than 3000 Gallons Per Day Design Flow
 R18-9-E306. 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E307. 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E308. 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E309. 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E310. 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E311. 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E312. 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E313. 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E314. 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E315. 4.15 General Permit: Aerobic System, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E316. 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E317. 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E318. 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E319. 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E320. 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E321. 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E322. 4.22 General Permit: Subsurface Drip Irrigation Disposal, Less Than 3000 Gallons Per Day Design Flow
 R18-9-E323. 4.23 General Permit: 3000 to Less Than 24,000 Gallons Per Day Design Flow

Table 1. Unit Design Flows

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

Section

- R18-9-401. Definitions
 R18-9-402. Nitrogen Management General Permits: Nitrogen Fertilizers
 R18-9-403. Nitrogen Management General Permits: Concentrated Animal Feeding Operations
 R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

Article 5, consisting of Section R18-9-501, made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

Section

- R18-9-501. Surface Water Quality General Grazing Permit

ARTICLE 6. RECLAIMED WATER CONVEYANCES

Article 6, consisting of Sections R18-9-601 through R18-9-603, adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

Section

- R18-9-601. Definitions
 R18-9-602. Pipeline Conveyances of Reclaimed Water
 R18-9-603. Open Water Conveyances of Reclaimed Water

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

Article 4 consisting of Sections R9-20-401 through R9-20-407 renumbered as Article 7, Sections R18-9-701 through R18-9-707 (Supp. 87-3).

Article 4 consisting of Sections R9-20-401 through R9-20-407 adopted effective May 24, 1985.

Former Article 4 consisting of Sections R9-20-401 through R9-20-408 repealed effective May 24, 1985.

Section

- R18-9-701. Definitions
 R18-9-702. Applicability and Standards for Reclaimed Water Classes
 R18-9-703. Transition of Permits
 R18-9-704. General Requirements
 R18-9-705. Reclaimed Water Individual Permit Application
 R18-9-706. Reclaimed Water Individual Permit General Provisions
 R18-9-707. Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water
 R18-9-708. Reusing Reclaimed Water Under a General Permit
 R18-9-709. Reclaimed Water General Permit Renewal and Transfer
 R18-9-710. Reclaimed Water General Permit Revocation
 R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water
 R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water
 R18-9-713. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water
 R18-9-714. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water
 R18-9-715. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water

Department of Environmental Quality – Water Pollution Control

- R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water
- R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility
- R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent
- R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water
- R18-9-720. Enforcement and Penalties

ARTICLE 8. REPEALED

Article 8, consisting of Sections R18-9-801 through R18-9-819, repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

Article 3 consisting of Sections R9-8-311 through R9-8-361 renumbered as Article 8, Sections R18-9-801 through R18-9-819 (Supp. 87-3).

Section

- R18-9-801. Repealed
- R18-9-802. Repealed
- R18-9-803. Repealed
- R18-9-804. Repealed
- R18-9-805. Repealed
- R18-9-806. Repealed
- R18-9-807. Repealed
- R18-9-808. Repealed
- R18-9-809. Repealed
- R18-9-810. Repealed
- R18-9-811. Repealed
- R18-9-812. Repealed
- R18-9-813. Repealed
- R18-9-814. Repealed
- R18-9-815. Repealed
- R18-9-816. Repealed
- R18-9-817. Repealed
- R18-9-818. Repealed
- R18-9-819. Repealed

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS

Section

- R18-9-A901. Definitions
- R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions
- R18-9-A903. Prohibitions
- R18-9-A904. Effect of a Permit
- R18-9-A905. AZPDES Program Standards
- R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution
- R18-9-A907. Public Notice
- R18-9-A908. Public Participation, EPA Review, EPA Hearing
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PART B. INDIVIDUAL PERMITS

Section

- R18-9-B901. Individual Permit Application
- R18-9-B902. Requested Coverage Under a General Permit
- R18-9-B903. Individual Permit Issuance or Denial
- R18-9-B904. Individual Permit Duration, Reissuance, and Continuation
- R18-9-B905. Individual Permit Transfer
- R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits
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PART C. GENERAL PERMITS

Section

- R18-9-C901. General Permit Issuance
- R18-9-C902. Required and Requested Coverage Under an Individual Permit
- R18-9-C903. General Permit Duration, Reissuance, and Continuation
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PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

Section

- R18-9-D901. CAFO Designations
- R18-9-D902. AZPDES Permit Coverage Requirements
- R18-9-D903. No Potential To Discharge Determinations for Large CAFOs
- R18-9-D904. AZPDES Permit Coverage Deadlines
- R18-9-D905. Closure Requirements

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Article 10, consisting of Sections R18-9-1001 through R18-9-1014 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

Section

- R18-9-1001. Definitions
- R18-9-1002. Applicability and Prohibitions
- R18-9-1003. General Requirements
- R18-9-1004. Applicator Registration, Bulk Biosolids
- R18-9-1005. Pollutant Concentrations
- R18-9-1006. Class A and Class B Pathogen Reduction Requirements
- R18-9-1007. Management Practices and General Requirements
- R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites
- R18-9-1009. Site Restrictions
- R18-9-1010. Vector Attraction Reduction
- R18-9-1011. Transportation
- R18-9-1012. Self-monitoring
- R18-9-1013. Recordkeeping
- R18-9-1014. Reporting
- R18-9-1015. Inspection
- Appendix A. Procedures to Determine Annual Biosolids Application Rates

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS**R18-9-101. Definitions**

In addition to the definitions established in A.R.S. § 49-201, the following terms apply to Articles 1, 2, 3, and 4 of this Chapter:

2. A permittee misrepresented or omitted a fact, information, or data related to an Aquifer Protection Permit application or permit condition;
 3. The Director determines that a permitted activity is causing or will cause a violation of an Aquifer Water Quality Standard at a point of compliance;
 4. A permitted discharge is causing or will cause imminent and substantial endangerment to public health or the environment;
 5. A permittee failed to maintain the financial capability under R18-9-A203(B); or
 6. A permittee failed to construct a facility within five years of permit issuance and:
 - a. It is necessary to update BADCT for the facility, and
 - b. The Department has not issued an amended permit under R18-9-A211(B)(6).
- B.** The Director may deny an individual permit if the Director determines upon completion of the application process that the applicant has:
1. Failed or refused to correct a deficiency in the permit application;
 2. Failed to demonstrate that the facility and the operation will comply with the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter. The Director shall base this determination on:
 - a. The information submitted in the Aquifer Protection Permit application,
 - b. Any information submitted to the Department following a public hearing, or
 - c. Any relevant information that is developed or acquired by the Department; or
 3. Provided false or misleading information.
- C.** The Director shall terminate an individual permit if each facility covered under the individual permit:
1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii) for the closed facility, or
 2. Is covered under another Aquifer Protection Permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A214. Requested Coverage Under a General Permit

- A.** If a person who applied for or was issued an individual permit qualifies to operate a facility under a general permit established in Article 3 of this Chapter, the person may request that the individual permit be terminated and replaced by the general permit. The person shall submit the Notice of Intent to Discharge under R18-9-A301(B) with the appropriate fee established in 18 A.A.C. 14.
- B.** The individual permit is valid and enforceable with respect to a discharge from each facility until the Director determines that the discharge from each facility is covered under a general permit.
- C.** The owner or operator operating under a general permit shall comply with all applicable general permit requirements in Article 3 of this Chapter.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

- A.** Applicability. The requirements in this Article apply to all sewage treatment facilities, including expansions of existing sewage treatment facilities, that treat wastewater containing sewage, unless the discharge is authorized by a general permit under Article 3 of this Chapter.
- B.** The Director may specify alert levels, discharge limitations, design specifications, and operation and maintenance requirements in the permit that are based upon information provided by the applicant and that meet the requirements under A.R.S. § 49-243(B)(1).
- C.** The permittee shall ensure that a sewage treatment facility is operated by a person certified under 18 A.A.C. 5, Article 1, for the grade of the facility.
- D.** Operation and maintenance.
1. The owner or operator shall maintain, at the sewage treatment facility, an operation and maintenance manual for the facility and shall update the manual as needed.
 2. The owner or operator shall use the operation and maintenance manual to guide facility operations to ensure compliance with the terms of the Aquifer Protection Permit and to prevent any environmental nuisance described under A.R.S. § 49-141(A).
 3. The Director may specify adherence to any operation or maintenance requirement as an Aquifer Protection Permit condition to ensure that the terms of the Aquifer Protection Permit are met.
 4. The owner or operator shall make the operation and maintenance manual available to the Department upon request.
- E.** A person shall not create or maintain a connection between any part of a sewage treatment facility and a potable water supply so that sewage or wastewater contaminates a potable or public water supply.
- F.** A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from a sewage treatment facility.
- G.** Reclaimed water dispensed to a direct reuse site from a sewage treatment facility is regulated under Reclaimed Water Quality Standards in 18 A.A.C. 11, Article 3.
- H.** The preparation, transport, or land application of any biosolids generated by a sewage treatment facility is regulated under 18 A.A.C. 9, Article 10.
- I.** The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

Sewage Treatment Facility Design Flow (gallons per day)	No Noise, Odor, or Aesthetic Controls (feet)	Full Noise, Odor, and Aesthetic Controls (feet)
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
 - a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
 - b. All odor-producing components of the sewage treatment facility are fully enclosed,
 - c. Odor scrubbers or other odor-control devices are installed on all vents, and
 - d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
 - a. Allowed by local ordinance; or
 - b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design of the sewage treatment facility, and the potential for noise and odor.
- J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B202. Design Report

- A. A person applying for an individual permit shall submit a design report signed, dated, and sealed by an Arizona-registered professional engineer. The design report shall include the following information:
 1. Wastewater characterization, including quantity, quality, seasonality, and impact of increased flows as the facility reaches design flow;
 2. The proposed method of disposal, including solids management;
 3. A description of the treatment unit processes and containment structures, including diagrams and calculations that demonstrate that the design meets BADCT requirements and will achieve treatment levels specified in R18-9-B204 through R18-9-B206, as applicable, for all flow conditions indicated in subsection (A)(9). If soil aquifer treatment or other aspects of site conditions are used to meet BADCT requirements, the applicant shall document performance of the site in the design report or the hydrogeologic report;
 4. A description of planned normal operation;

5. A description of key maintenance activities and a description of contingency and emergency operation for the facility;
6. A description of construction management controls;
7. A description of the facility startup plan, including pre-operational testing, expected treated wastewater characteristics and monitoring requirements during startup, expected time-frame for meeting performance requirements specified in R18-9-B204, and any other special startup condition that may merit consideration in the individual permit;
8. A site diagram depicting compliance with the setback requirements established in R18-9-B201(I) for the facility at design flow, and for each phase if the applicant proposes expansion of the facility in phases;
9. The following flow information in gallons per day for the proposed sewage treatment facility. If the application proposes expansion of the facility in phases, the following flow information for each phase:
 - a. The design flow of the sewage treatment facility. The design flow is the average daily flow over a calendar year calculated as the sum of all influent flows to the facility based on Table 1, Unit Design Flows, unless a different basis for determining influent flows is approved by the Department;
 - b. The maximum day. The maximum day is the greatest daily total flow that occurs over a 24-hour period within an annual cycle of flow variations;
 - c. The maximum month. The maximum month is the average daily flow of the month with the greatest total flow within the annual cycle of flow variations;
 - d. The peak hour. The peak hour is the greatest total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations;
 - e. The minimum day. The minimum day is the least daily total flow that occurs over a 24-hour period within the annual cycle of flow variations;
 - f. The minimum month. The minimum month is the average daily flow of the month with the least total flow within the annual cycle of flow variations; and
 - g. The minimum hour. The minimum hour is the least total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations; and
10. Specifications for pipe, standby power source, and water and sewer line separation.
- B. The Department may inspect an applicant's facility without notice to ensure that construction conforms to the design report.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B203. Engineering Plans and Specifications

- A. A person applying for an individual permit for a sewage treatment facility with a design flow under one million gallons per day, shall submit engineering plans and specifications to the Department. The Director may waive this requirement if the Director previously approved engineering plans and specifications submitted by the same owner or operator for a sewage treatment facility with a design flow of more than one million gallons per day.
- B. A person applying for an individual permit for a sewage treatment facility with a design flow of one million gallons per day or greater shall submit engineering plans and specifications if,

1 FENNEMORE CRAIG
2 Jay L. Shapiro (No. 014650)
3 3003 North Central Avenue, Suite 2600
4 Phoenix, Arizona 85012
5 Telephone (602) 916-5000
6 Attorneys for Black Mountain Sewer Corporation

7
8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE
10 APPLICATION OF BLACK MOUNTAIN
11 SEWER CORPORATION, AN ARIZONA
12 CORPORATION, FOR A
13 DETERMINATION OF THE FAIR
14 VALUE OF ITS UTILITY PLANT AND
15 PROPERTY AND FOR INCREASES IN
16 ITS RATES AND CHARGES FOR
17 UTILITY SERVICE BASED THEREON.

DOCKET NO: SW-02361A-08-0609

18 **DIRECT TESTIMONY OF**
19 **GREGORY S. SORENSEN**

20 **(PHASE 2)**

21 **March 16, 2012**
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1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Greg Sorensen. My business address is 12725 W. Indian School Road,
4 Suite D-101, Avondale, AZ 85392.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. On behalf of Black Mountain Sewer Corporation ("BMSC" or "Company").

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by Liberty Water as Vice President and General Manager. Liberty
9 Water is BMSC's sole shareholder. In that capacity, I am responsible for Liberty
10 Water's operations in Texas, Missouri, Illinois, and Arizona, including operation of
11 BMSC in the areas of customer service, operations, engineering, developer
12 services, conservation, and human resources.

13 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
14 **PROCEEDING?**

15 A. Yes. My prefiled direct, rebuttal, and rejoinder testimonies were entered into
16 evidence in the first phase of this docket. I also testified during the hearings before
17 the Commission that preceded Decision No. 71865 (September 1, 2010) (the
18 "Decision").

19 **Q. WHAT IS THE PURPOSE OF THIS (PHASE 2) DIRECT TESTIMONY?**

20 A. I will provide an update of the events that have taken place since the Decision was
21 issued and discuss the efforts BMSC has made to comply with the Decision and the
22 Wastewater Treatment Plant Closure Agreement ("Closure Agreement"). I will
23 also explain the Company's position regarding the BHOA's request for relief in
24 this phase of this proceeding.

1 **II. POST-DECISION COMPLIANCE, ACTIVITIES AND EVENTS**

2 **Q. IS BMSC CURRENTLY IN FULL COMPLIANCE WITH ALL**
3 **COMMISSION AND OTHER REGULATORY REQUIREMENTS?**

4 **A. Yes.**

5 **Q. IS THE PLANT STILL OPERATING?**

6 **A. Yes.** We are treating 120,000 gpd of wastewater daily and producing effluent that
7 is being purchased by the Resort.

8 **Q. DID THE COMMISSION ORDER THE PLANT TO BE CLOSED?**

9 **A. No.** The Commission only approved a means of dealing with the plant closure
10 costs, finding that the Closure Agreement between BMSC and the BHOA
11 “provides an appropriate and creative solution for what [the Commission]
12 believe[s] is a unique set of circumstances.”¹ To date, despite our best efforts,
13 BMSC has not been able to reach an agreement with the Resort that would allow us
14 to close the plant.

15 **Q. WHAT STEPS HAVE YOU TAKEN TOWARDS CLOSURE SINCE THE**
16 **DECISION WAS ISSUED?**

17 **A.** Promptly after the Decision was issued, representatives from the BHOA and
18 Company met with representatives from the Resort to discuss termination of the
19 March 2001 Effluent Delivery Agreement (“Effluent Agreement”) between BMSC
20 and the Boulders Resort. That meeting led to several months of discussions of
21 alternatives for the Resort to replace the effluent they buy from us to irrigate their
22 golf course.

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24
25
26 ¹ Decision at 52:1-8, 53:22-23.

1 **Q. WHAT ALTERNATIVES FOR THE RESORT HAVE YOU CONSIDERED?**

2 A. We have evaluated the following alternatives, and I will discuss each alternative in
3 detail:

- 4 • Additional storage for the Resort's irrigation water needs;
- 5 • Building a new wastewater treatment plant on the Resort's property;
- 6 • Buying replacement treatment capacity and effluent water from the Town of
7 Cave Creek;
- 8 • Expanding the City of Scottsdale's reclaimed water system to provide the
9 Resort with replacement water; and
- 10 • Buying replacement water from a Town of Carefree well.

11 **Q. PLEASE EXPLAIN EACH OF THE ALTERNATIVES FOR THE RESORT**
12 **YOU HAVE CONSIDERED.**

13 A. The Resort told us they thought the issue could be resolved with additional storage.
14 BMSC paid for its engineers to evaluate the possibility of using the current plant
15 site as a storage facility for the Resort after demolition had occurred.² Our
16 engineers also evaluated the cost of deepening the Resort's existing lakes to create
17 additional storage. We provided that information to the Resort but never heard
18 anything further about that possible alternative. As a result, we do not know
19 exactly how much storage the Resort actually needs, or why this alternative won't
20 work.

21 We also looked at constructing a new plant on a site within the golf course
22 and owned by the Resort. But there are problems with this alternative. First,
23 notwithstanding BMSC's compliance with applicable laws and regulations and
24 plant upgrades, given the history and sensitivity of certain members of the
25

26 ² See Exhibit GS-DT2-A.

1 community to odor, noise and aesthetics in this community, it is estimated that a
2 replacement plant would be in the range of \$30 per gallon to construct, or roughly
3 \$3.6 million. This is significantly more expensive than the estimated costs of the
4 closure project. Second, the new plant would still be roughly 350 feet from homes.
5 I don't think we could get approval to site a plant that close to homes without the
6 homeowners' agreement, and I don't find it likely that the homeowners would
7 agree.

8 We have also spoken with the Town of Cave Creek regarding possibilities
9 of buying capacity at their plant as well as bringing effluent from their plant to the
10 Resort. They stated that capacity would be \$35/gallon, plus \$4.50 per 1,000
11 gallons treated. Both those prices are significantly higher than the costs under our
12 contract with the City of Scottsdale.

13 Finally, we discussed with the City of Scottsdale the possible expansion of
14 its reclaimed water system, and performed some analysis of a Town of Carefree
15 well and its capability of supplying water to the golf course. However, the City
16 told us that using groundwater would violate their RWDS agreement with the
17 Resort.

18 **Q. DOES THE COMPANY HAVE TO SEND ITS WASTEWATER TO CAVE**
19 **CREEK FOR THE RESORT TO BUY EFFLUENT FROM CAVE CREEK?**

20 **A.** We don't believe so and inquired recently whether it would be possible to just
21 interconnect with the Town's effluent system and purchase effluent on a per acre
22 foot basis. We were told this may be possible. However, we estimate the cost to
23 interconnect with their effluent system to be in the neighborhood of \$1 million, and
24 the current price of their effluent is about \$318 per acre-foot. We do not know if
25 the Resort has also considered this option.

26

1 Q. HAS THE BHOA BEEN A PARTICIPANT IN THESE EFFORTS?

2 A. Absolutely, as was the Resort until last summer.

3 Q. HAS THE BHOA PROVIDED OTHER ALTERNATIVES FOR THE
4 COMPANY TO EVALUATE?

5 A. Yes. At the BHOA's request, we also recently evaluated the possibility of keeping
6 the plant open during the two roughly one-month periods of the year when the
7 Resort claims it absolutely must have our effluent in order to exist. We believe that
8 this option can be done, but is not without its own inherent challenges.

9 Q. WHAT SORT OF CHALLENGES?

10 A. When you have intermittent operating periods, you have a ramp-up and ramp-down
11 of the plant operations. During those start-up and shut down periods, there could
12 be additional odors, noise, and truck traffic at the plant each time we have to reseed
13 and then clean-up. It is normal for a plant in start-up mode to "ease" into
14 operation, during which time there could be process instability, resulting in the
15 aforementioned increased odor possibility, along with decreased effluent quality.
16 Also, when a plant is temporarily "moth-balled," it can accelerate the wear and tear
17 on certain equipment.

18 Q. WOULD THIS ALTERNATIVE ELIMINATE THE CLOSURE COSTS?

19 A. Only the decommissioning costs. We would still need to expand the downstream
20 piping from the plant and to purchase additional capacity from the City of
21 Scottsdale. We would also not have the eventual sale of the plant site.

22 Q. ARE THERE OTHER 'OUTSIDE THE BOX' ALTERNATIVES THAT THE
23 COMPANY HAS CONSIDERED?

24 A. Yes, in fact we looked into just covering the entire plant with a structure, but it
25 isn't like we can just enclose it in a glass bubble. Rather, multiple parts of the
26 plant would have to be retrofitted so that they can be covered, and the entire plant

1 would need to be enclosed in a structure. This retrofitting would have a hefty price
2 tag – roughly \$1 million for the structure, plus additional significant costs for
3 additional odor control, noise control, electrical facilities upgrades, and aesthetics
4 of the exterior to better blend-in with the surrounding neighborhood. Of course,
5 after all that investment, the neighbors would still have a wastewater plant at its
6 current location.

7 **Q. THANK YOU. IN ADDITION TO YOUR DISCUSSIONS WITH BHOA**
8 **AND THE RESORT, AND YOUR ANALYSES OF ALTERNATIVE**
9 **SOLUTIONS, HAVE YOU TAKEN ANY OTHER STEPS TOWARDS**
10 **CLOSING THE PLANT?**

11 **A.** Yes. We have submitted a proposed amendment to our agreement with the City of
12 Scottsdale for purchasing effluent, another condition of the closure. We also had a
13 third party engineer perform an estimate of the cost and feasibility of downstream
14 piping expansion requirement and routing evaluations, without full hydraulic
15 analysis.

16 **Q. HAVE THERE BEEN ANY OTHER SIGNIFICANT EVENTS THAT**
17 **IMPACT THE PLANT'S CLOSURE?**

18 **A.** Mr. Robert Marshall is suing us in Superior Court.

19 **Q. WHO IS MR. MARSHALL?**

20 **A.** He is a customer of the Company and the homeowner that, in 2003, bought the
21 home located roughly 85 feet from the plant. He filed suit in February 2011
22 seeking closure of the plant and an unspecified amount of damages.

23 **Q. THE PLANT WAS THERE WHEN MR. MARSHALL MOVED IN?**

24 **A.** Yes, the plant has been there since 1969, before Mr. Marshall moved in and before
25 the home in which he lives was built. As we understand the history, the Resort's
26 predecessor in interest, the Boulders Joint Venture, formed the utility and built the

1 plant, and then built the resort and golf courses and sold off the lots that now
2 contain the homes in close proximity to the plant.

3 **Q. IS BMSC DEFENDING MR. MARSHALL'S LAWSUIT?**

4 A. Yes. It is just one more source of cost we are incurring regarding the plant. Trial
5 is currently scheduled for January 2013.

6 **Q. WHY NOT JUST CLOSE THE PLANT TO GET RID OF MR.
7 MARSHALL'S LAWSUIT AND SATISFY THE BHOA?**

8 A. Although we believe that the Marshall lawsuit is without merit, we would
9 nevertheless close the plant but for the Resort having threatened to sue us. I have
10 attached the demand letter the Resort sent us last summer as **Exhibit GS-DT2-B**.
11 Both the Closure Agreement and the Decision make the termination of the
12 agreement with the Resort a condition precedent to the plant closure.³

13 **Q. WHAT CAN THE RESORT DO?**

14 A. The Resort has made clear that it will not accept an order of the Commission
15 requiring BMSC to close the plant.⁴ If the Resort challenges closure, it could also
16 sue us for damages if we close the plant to comply with a Commission order.
17 Given that the Resort is claiming it will cost upwards of \$10 million to replace our
18 effluent, compliance with a Closure Order could result in astronomical rate
19 increases related to the plant closure. Those costs would come from the legal costs
20 of defending an appeal, and from the chance of a court agreeing with the Resort
21 and awarding damages (we would disagree with such a decision but litigation is
22 often uncertain).

23

24 ³ See Decision at 51:15-21; Boulders Homeowners' Association's Motion for Plant Closure Order, filed
25 June 15, 2011 at Exhibit C, paragraph 2(a)(iv).

26 ⁴ See, e.g., Reporter's Transcript of Proceedings, Procedural Conference, February 7, 2012 at 13-14, 18-
19, 33-34.

1 Q. DO YOU HAVE TO COMPLY WITH AN ORDER TO CLOSE THE PLANT
2 BEFORE YOU KNOW WHETHER THE RESORT WILL RECOVER
3 DAMAGES?

4 A. If the Commission orders us to close the plant it is hard to envision us not
5 complying with the order. I assume it would be a legally binding order. BMSC is
6 owned by Liberty Utilities, which owns and operates 22 utilities in 5 states,
7 providing 120,000 customers with electric, water, and wastewater utility service.
8 Liberty Utilities cannot afford to fail to comply with a Public Utilities Commission
9 ("PUC") order. And Liberty Utilities' parent is Algonquin Power & Utilities
10 Corporation (APUC), a publicly traded company on the Toronto Stock Exchange.
11 APUC owns approximately 70 hydro and renewable energy facilities throughout
12 North America. APUC cannot afford to have any of its utilities failing to comply
13 with PUC orders as that would affect the market's view of APUC's regulatory
14 relationships and ability to continue to grow its regulated and unregulated affiliates.

15 Q. SO, ARE YOU SAYING BMSC WOULD CLOSE THE PLANT AND THEN,
16 IF IT WAS SUED, SEEK TO RECOVER THE COSTS OF THAT LAWSUIT
17 AS PART OF THE COST OF SERVICE?

18 A. Yes. What other choice would we have? The Commission, a regulatory agency
19 with which we have to comply, would be ordering us to close a fully compliant,
20 used and useful asset. We have a reasonable expectation that we will be made
21 whole for all of the costs associated with this closure project, whether they be the
22 costs of actually closing it, the costs of keeping it open until we can close it, and/or
23 the costs we incur because we did close it. This concept is the essence of our
24 ACC-sanctioned agreement with the BHOA to close the plant.

25
26

1 Q. MR. SORESENSEN, IT SOUNDS LIKE YOU ARE IN A DIFFICULT
2 POSITION.

3 A. A very difficult position. The BHOA is asking the Commission to force closure of
4 the plant, which will result in the Resort suing BMSC, which is already being sued
5 by Mr. Marshall. In the end, all of these legal issues will affect the Company and
6 its ratepayers.

7 Q. ARE THERE OTHER PRE-CLOSURE STEPS TO BE COMPLETED?

8 A. At this juncture, there are no other steps we can take until this tug of war between
9 the BHOA and the Resort is resolved.

10 **III. BHOA REQUEST FOR ORDER OF CLOSURE**

11 Q. WHAT DO YOU UNDERSTAND TO BE THE PURPOSE OF THIS
12 SECOND PHASE OF THIS RATE PROCEEDING?

13 A. We understand that the Commission wishes to consider whether to order BMSC to
14 close its wastewater treatment plant.

15 Q. DOES BMSC OPPOSE AN ORDER OF THE COMMISSION REQUIRING
16 CLOSURE OF THE PLANT?

17 A. Notwithstanding that BMSC operates the plant properly and in compliance with the
18 law, we recognize the BHOA's interest in closing the plant – that's why we
19 developed a pathway agreement with them and why we asked the Commission to
20 approve that plan. But we have always made it clear that the Resort situation has
21 to be addressed. At this point, our position really is this: we want to make sure the
22 Commission understands that BMSC has never been ordered to close the plant; we
23 have undertaken every step reasonably possible to meet the BHOA's concerns and
24 interest in closing the plant; and with the Resort's position, the costs and litigation
25 risk of closure are higher than we anticipated. As a result, any closure order would
26 have to provide for cost recovery as I discussed earlier in this testimony.

1 Q. SO BASICALLY IF THE COMMISSION AGREES WITH THE BHOA AND
2 ORDERS YOU TO CLOSE THE PLANT, YOU WANT THE COMMISSION
3 TO REQUIRE THE RATEPAYERS TO INDEMNIFY THE COMPANY
4 FROM THE RESORT?

5 A. That is essentially what we need as I discussed above. The Company is now stuck
6 in the middle between the desires of its residential ratepayers and the needs of its
7 largest commercial ratepayer – the Resort. Whatever we are directed to do, it will
8 be because the Commission determined it was in the public interest. In that case,
9 we need assurance that we will be allowed to recover all of the costs reasonably
10 and prudently incurred to remove this used and useful, fully-compliant utility
11 property.

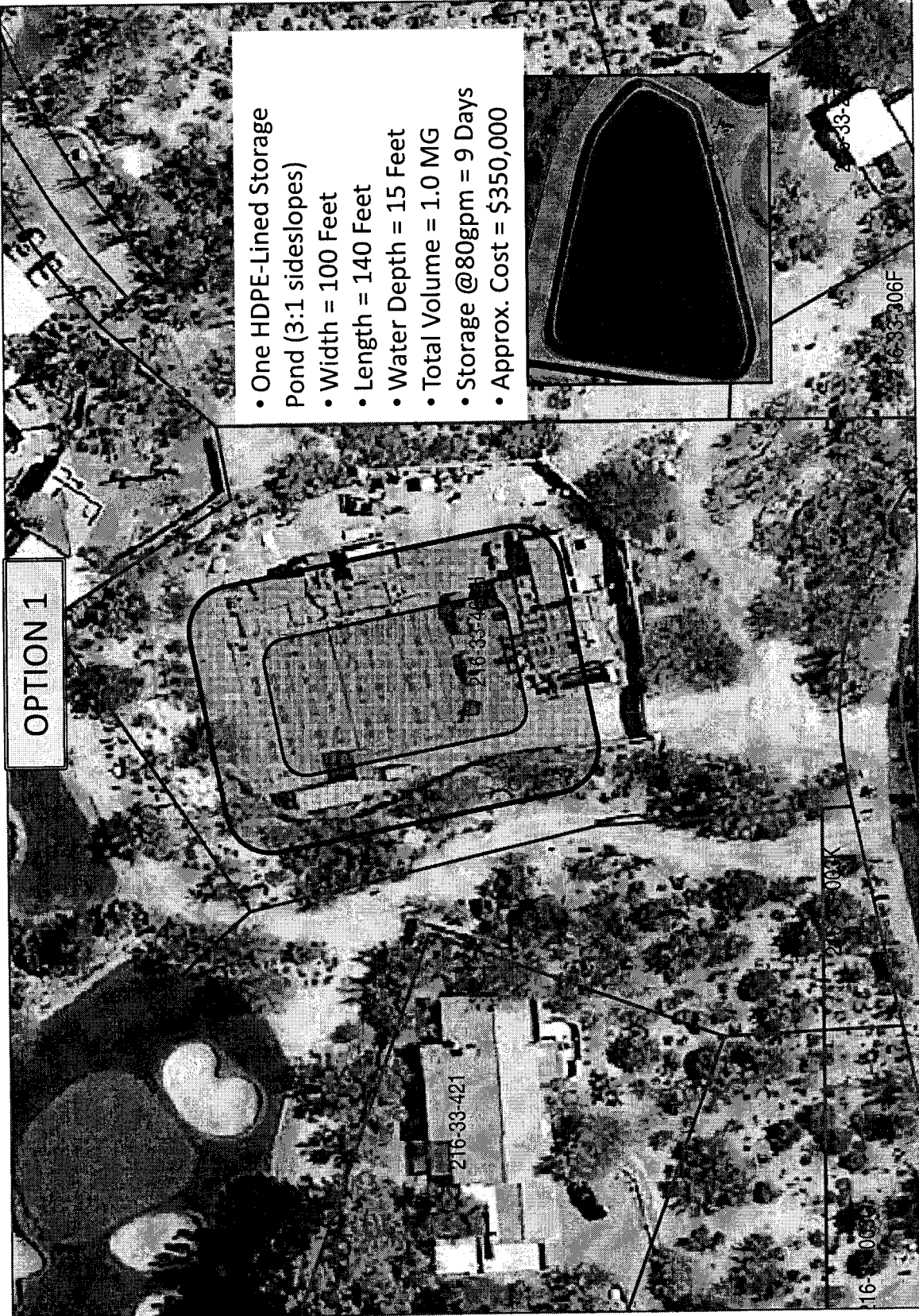
12 Q. WHY DO YOU BELIEVE THAT'S FAIR?

13 A. If it is in the public interest to close the plant (which is used and useful and in
14 regulatory compliance), then we are entitled to recover the costs of doing so which,
15 in this case, may also include being sued by the Resort for closing the plant in
16 order to comply with a Commission order.

17 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

18 A. Yes.
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Exhibit GS-DT2-A



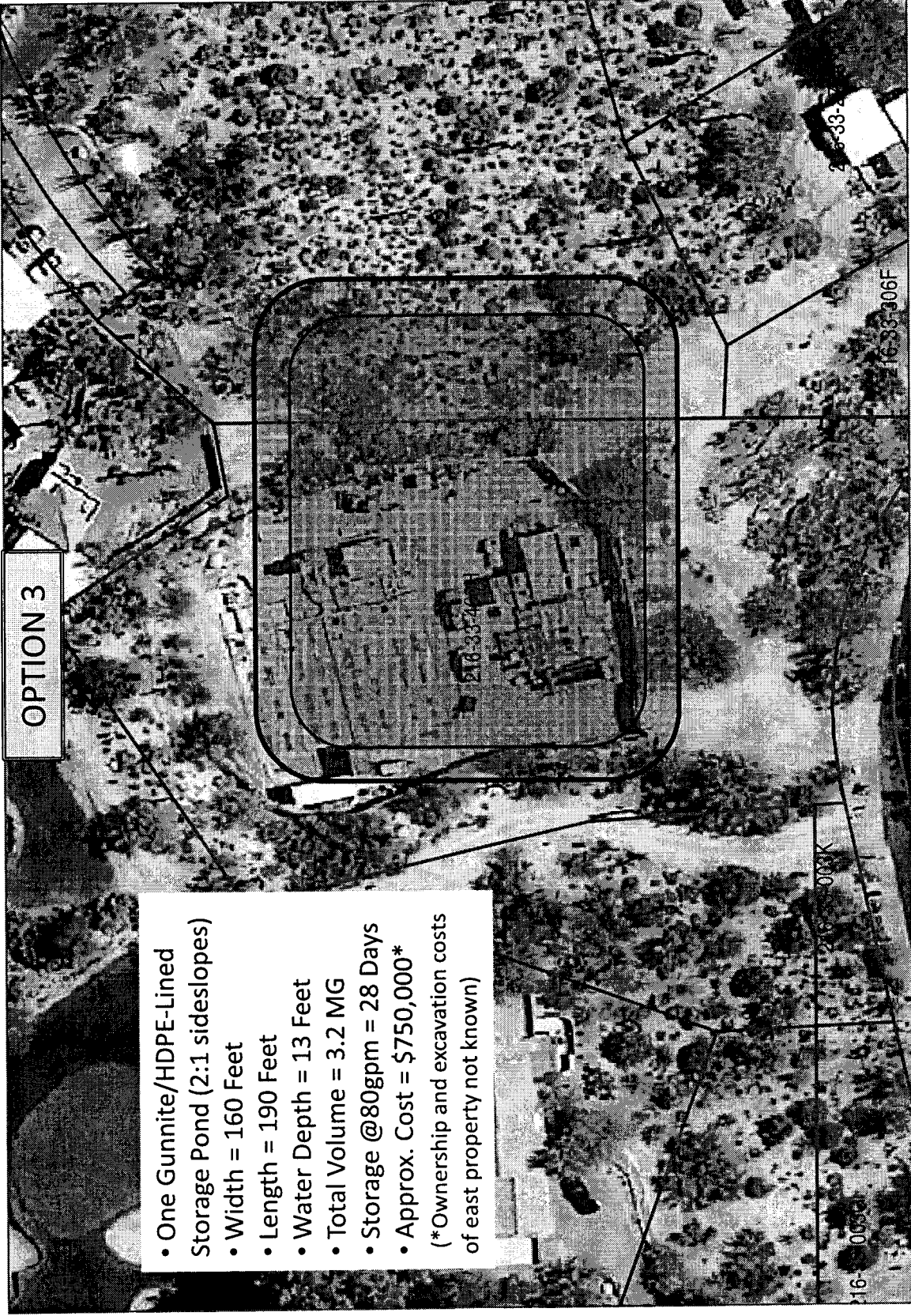
- One HDPE-Lined Storage Pond (3:1 sideslopes)
- Width = 100 Feet
- Length = 140 Feet
- Water Depth = 15 Feet
- Total Volume = 1.0 MG
- Storage @80gpm = 9 Days
- Approx. Cost = \$350,000

OPTION 2

- One Gunnite/HDPE-Lined Storage Pond (2:1 sideslopes)
- Width = 100 Feet
- Length = 200 Feet
- Water Depth = 13 Feet
- Total Volume = 1.6 MG
- Storage @80gpm = 14 Days
- Approx. Cost = \$750,000

- One Gunnite/HDPE-Lined Storage Pond (2:1 sideslopes)
- Width = 100 Feet
- Length = 200 Feet
- Water Depth = 13 Feet
- Total Volume = 1.6 MG
- Storage @80gpm = 14 Days
- Approx. Cost = \$750,000

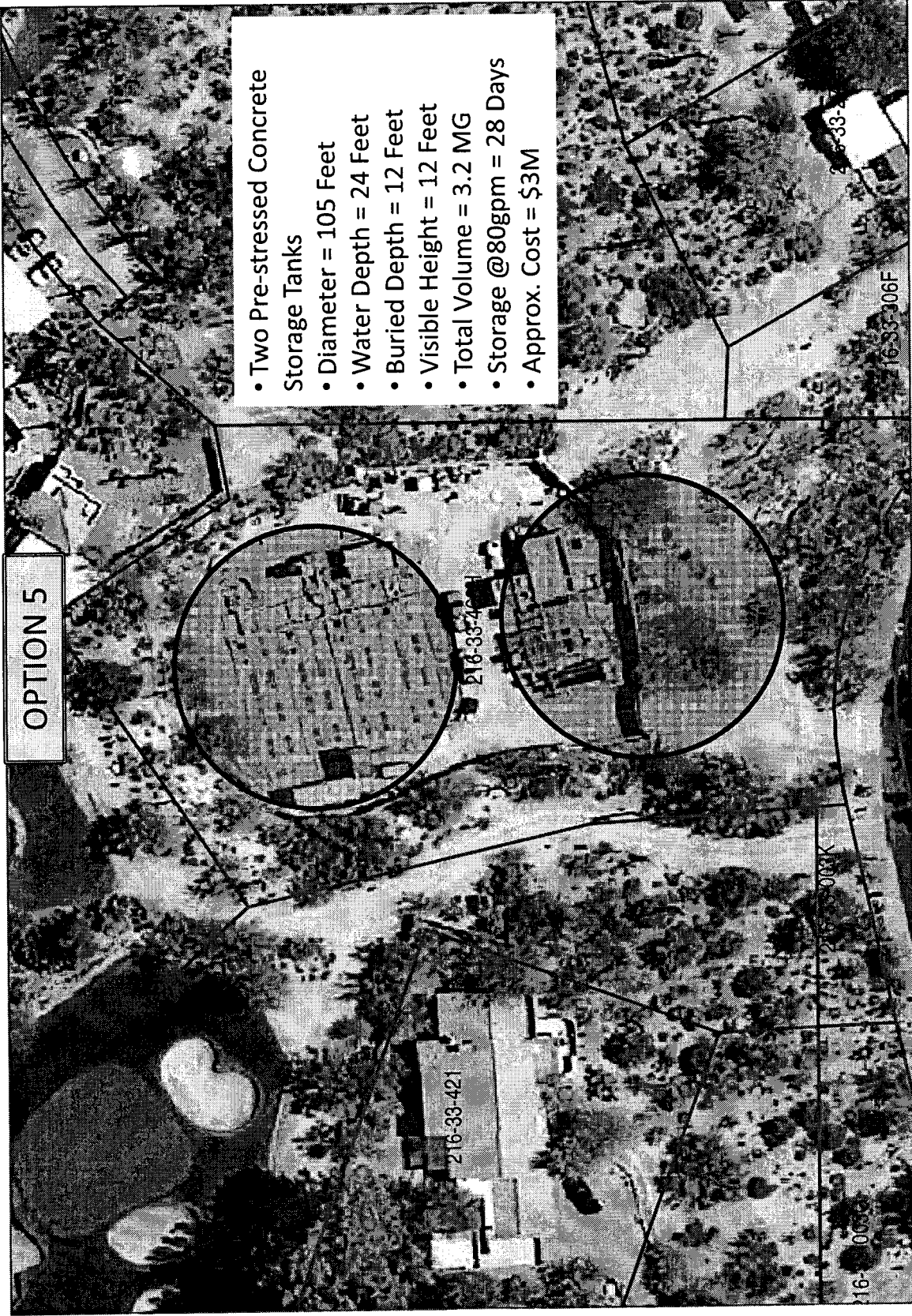


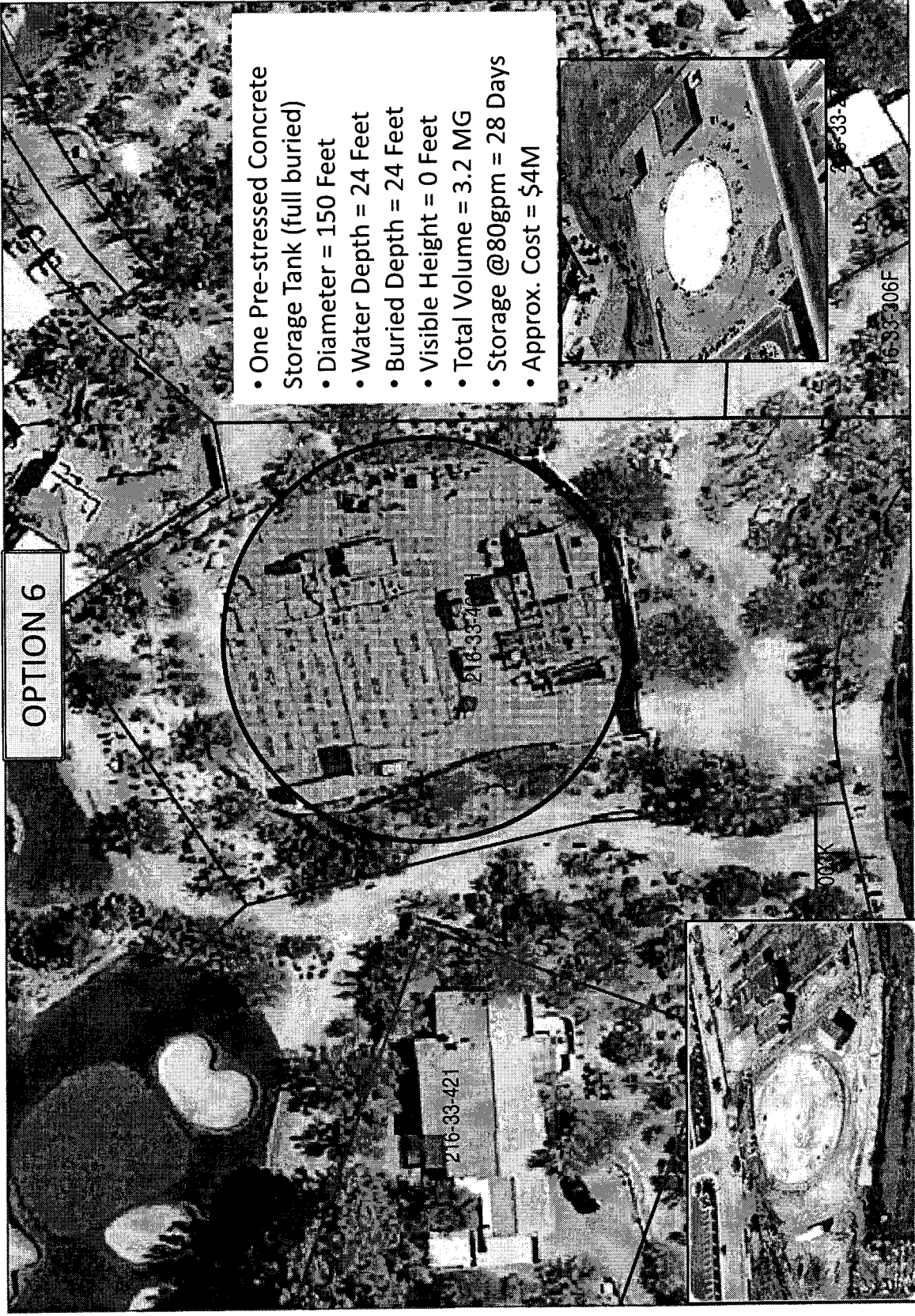


OPTION 3

- One Gunnite/HDPE-Lined Storage Pond (2:1 sideslopes)
 - Width = 160 Feet
 - Length = 190 Feet
 - Water Depth = 13 Feet
 - Total Volume = 3.2 MG
 - Storage @80gpm = 28 Days
 - Approx. Cost = \$750,000*
- (*Ownership and excavation costs of east property not known)







OPTION 6

- One Pre-stressed Concrete Storage Tank (full buried)
- Diameter = 150 Feet
- Water Depth = 24 Feet
- Buried Depth = 24 Feet
- Visible Height = 0 Feet
- Total Volume = 3.2 MG
- Storage @80gpm = 28 Days
- Approx. Cost = \$4M

- (*Excavation conditions unknown)

Exhibit GS-DT2-B

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& APPLEWHITE
Attorneys

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June 3, 2011

HAND-DELIVERED

Jay Shapiro, Esq.
Fennemore Craig
3003 N. Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913

Re: The Boulders v. Black Mountain Sewer Corporation

Dear Mr. Shapiro:

We are writing to you in your capacity as counsel for Black Mountain Sewer Corporation ("Black Mountain Sewer"). Please be advised that Michele Van Quathem and I have been engaged by Wind P1 Mortgage Borrower, LLC, doing business as The Boulders ("The Boulders"), along with co-counsel Janet Betts and Danelle Kelling, to represent it in connection with enforcing its rights under the 2001 Effluent Delivery Agreement with Black Mountain Sewer. In accordance with our instructions, pursuant to Paragraph 14(a), we formally invoke and require that Black Mountain Sewer's Designated Representative personally meet and confer with us at the earliest practicable date to engage in good-faith negotiations to resolve our pending dispute. Pursuant to Paragraph 14(b), if we are unable to resolve this dispute promptly, we reserve the right to initiate binding arbitration of all issues subject to arbitration, including but not limited to damages. In invoking this process, we are not waiving our right to pursue any and all legal and equitable remedies through the courts or in any appropriate administrative proceedings, through direct legal actions or through intervention in existing actions or proceedings, in our sole discretion.

We have formally invoked this meeting process under our contract in light of the long and disappointing history of informal discussions with Black Mountain Sewer. We have attempted in good faith to cooperate with Black Mountain Sewer to find appropriate solutions, but Black Mountain Sewer to date has failed to provide any assurances of its intentions to honor its contractual obligations to The Boulders, or to provide suitable replacement water without detriment to The Boulders. In fact, in reviewing the history of these discussions, Black Mountain Sewer has repeatedly appeared to disregard or dismiss those obligations. Moreover, to add insult to injury, in expressly seeking to terminate Black

Jay Shapiro, Esq.
June 3, 2011
Page 2

RYLEY CARLOCK
& APPLEWHITE
Attorneys

Mountain Sewer's contractual obligations to The Boulders without securing replacement water or offering any compensation (or even offering the land at a substantially reduced purchase price), the draft document you just forwarded to Ms. Kelling underscores Black Mountain Sewer's unjustified and irresponsible refusal to honor or even to acknowledge those obligations.

Consistent with your client's refusal to acknowledge its obligation, Black Mountain Sewer has stated that it has no intention of properly compensating The Boulders in the event that Black Mountain Sewer elects to close its wastewater treatment plant. Black Mountain Sewer's failure to acknowledge its continuing obligation to The Boulders not only constitutes an anticipatory breach of contract, but also demonstrates bad faith in regard to Black Mountain Sewer's obligations. Accordingly, we have been retained to pursue appropriate legal action if Black Mountain Sewer does not promptly propose an appropriate resolution acceptable to The Boulders. In addition to seeking appropriate declaratory and other equitable relief as well as damages, we will also seek reimbursement of The Boulders' attorneys' fees and expenses.

There is no reasonable question that Black Mountain Sewer bears the legal responsibility to make appropriate arrangements to provide The Boulders with suitable replacement water after Black Mountain Sewer ceases operations at its wastewater treatment plant. The Effluent Delivery Agreement contractually obligates Black Mountain Sewer to provide 150,000 gallons per day to The Boulders at the contractually specified price for the 10-year term remaining under the contract, or through 2021. Moreover, pursuant to Paragraph 6, subparagraphs (a) and (c), Black Mountain Sewer made specific representations and covenants in the agreement, including to "[m]ake such repairs, upgrades and improvements to the Boulders East Plant as may be necessary" to operate the facility to meet Black Mountain Sewer's obligations to The Boulders. By failing to address the facility's odor issues in a timely fashion to the residents' satisfaction, and instead allowing the situation to continue to the point where Black Mountain Sewer has instead negotiated an intended closure plan, Black Mountain Sewer has violated its covenants and acted in a fashion intended to deprive The Boulders of its benefits under the agreement.

Moreover, The Boulders had the legal right to rely on these representations, covenants and promises under the agreement, and in fact, has done so. But for the existence of these legally binding commitments by Black Mountain Sewer, The Boulders would undoubtedly have pursued other water sources and solutions over the last decade. However, having relied, as we were entitled to do, on Black Mountain Sewer's 20-year contractual commitment, options that might have been more cost-effective if pursued years ago are now either unavailable, impractical or infeasible because of the extraordinary costs. Black Mountain Sewer's conduct has left The Boulders in this highly problematic situation, and Black Mountain Sewer is legally responsible to The Boulders to address this situation and take steps to mitigate The Boulders' existing and potential damages. Quite simply, and with

no pun intended, Black Mountain Sewer has acted as if it is somehow acceptable to leave The Boulders "high and dry" while pursuing an intended plant closure.

Leaving aside the fact that Black Mountain Sewer's conduct leading up to the intended plant closure was itself a breach of the agreement with The Boulders, Black Mountain Sewer cannot simply terminate its obligations to The Boulders without its consent. Indeed, we are troubled by Black Mountain Sewer's negotiated condition in its intended closure plan that specifies that it be allowed to terminate the obligation to The Boulders at little to no economic cost. That condition could not have been stipulated in good faith because, as already noted, The Boulders has relied on that agreement, and it is Black Mountain Sewer's responsibility to mitigate (or, if necessary, compensate) The Boulders under these circumstances.

Specifically, we expect and demand that Black Mountain Sewer agree to the following terms:

(1) Black Mountain Sewer must cooperate with and assist The Boulders in making arrangements for replacement water pursuant to a plan that will ensure that such water is available, and will be delivered without any interruption in service created by the closure of the wastewater treatment plant, or any reduction in its service leading up to that closure.

(2) In the event that any replacement water secured under paragraph 1 above involves additional costs beyond the amount that would have been owed by The Boulders under the Effluent Delivery Agreement, then Black Mountain Sewer will accept responsibility for paying or reimbursing these costs.

(3) Black Mountain Sewer will not continue to represent or imply to the Arizona Corporation Commission or any other public entity that Black Mountain Sewer may be able to evade its financial responsibility to The Boulders. We do not consent to any such representation and, in fact, are sending you this letter to inform you explicitly that we reserve and intend to enforce our legal rights in this matter to the fullest extent possible, unless a good-faith effort by Black Mountain Sewer results in a mutually acceptable resolution within the next 30 days.

(4) Black Mountain Sewer will agree to keep The Boulders fully informed about, and will consult with, The Boulders and its legal counsel regarding any legal action, including court cases and administrative proceedings, as well as enforcement actions or government investigations. Black Mountain Sewer must agree that it will not oppose any motion or other effort by The Boulders to intervene in any such matters.

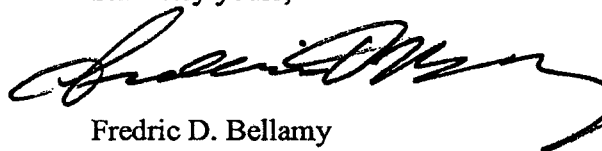
Jay Shapiro, Esq.
June 3, 2011
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Attorneys

In exchange for Black Mountain Sewer's agreement to these terms, The Boulders will agree not to pursue its current damages or attorneys' fees and expenses from Black Mountain Sewer. We are willing to waive such claims in exchange for a prompt agreement by Black Mountain Sewer to honor its obligations because we believe that continued cooperation and compromise would be in the best interests of the parties and of the community. However, please understand that we reserve all rights to prosecute any and all available claims, if we are forced to take legal or other action to protect our interests in this matter.

Pursuant to Paragraph 14(a) of the Effluent Delivery Agreement, we are sending copies of this letter to the designated addressees for receipt of formal notices. Please advise us at your earliest opportunity of your and your client's availability for a meeting with us to discuss and attempt to resolve this dispute.

Sincerely yours,



Fredric D. Bellamy

FDB/sdd

cc: Black Mountain Sewer Company (via Federal Express)
c/o Mr. Greg Sorensen
Suite 201, 1962 Canso Road
Sidney, British Columbia
Canada V8L 5V5

Algonquin Power Income Fund (via Federal Express)
c/o Mr. Peter Kampian
Algonquin Power Corporation, Inc.
#210, 2085 Hurontario Street
Mississauga, Ontario L5A 4G1

1 FENNEMORE CRAIG
Jay L. Shapiro (No. 014650)
2 3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
3 Telephone (602) 916-5000
4 Attorneys for Black Mountain Sewer Corporation

5 **BEFORE THE ARIZONA CORPORATION COMMISSION**

6
7
8 IN THE MATTER OF THE
APPLICATION OF BLACK MOUNTAIN
9 SEWER CORPORATION, AN ARIZONA
CORPORATION, FOR A
10 DETERMINATION OF THE FAIR
11 VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
12 ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: SW-02361A-08-0609

13
14
15 **RESPONSE TESTIMONY OF**
16 **GREGORY S. SORENSEN**

17 **(PHASE 2)**

18 **April 6, 2012**
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IV. THE RESORT IS GOING TO HAVE TO INVEST IN ITS FUTURE
IF IT WANTS TO CONTINUE TO OPERATE AT THE SAME
LEVEL. 8

6857259/016040.0038

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Greg Sorensen. My business address is 12725 W. Indian School Road,
4 Suite D-101, Avondale, AZ 85392.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. On behalf of Black Mountain Sewer Corporation ("BMSC" or "Company").

7 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
8 **PROCEEDING?**

9 A. Yes. My prefiled direct, rebuttal, and rejoinder testimonies were entered into
10 evidence in the first phase of this docket, and I testified during the hearings before
11 the Commission that preceded Decision No. 71865 (September 1, 2010) (the
12 "Decision"). I've also submitted direct testimony in the second phase of this
13 docket.

14 **Q. WHAT IS THE PURPOSE OF THIS (PHASE 2) RESPONSE TESTIMONY?**

15 A. I have reviewed the direct testimony filed by the Boulders Resort (the "Resort") on
16 March 16, 2012 in this proceeding and I will provide the Company's response.

17 **II. THE RESORT'S POSITION IN THIS PROCEEDING LACKS SUPPORT**
18 **AND APPEARS TO BE BASED ON A FALSE PREMISE.**

19 **Q. THE RESORT CLAIMS THAT ORDERING THE PLANT CLOSED**
20 **TRAMPLES ON ITS CONTRACTUAL RIGHTS. IS THAT TRUE?**

21 A. No. I am not a lawyer, but at paragraph 6 of the Effluent Delivery Agreement the
22 parties specifically contemplated that there might be an order (or law, regulation, or
23 regulatory requirement) preventing operation of the plant. The parties expressly
24 agreed that an order closing the plant would "terminate" the Company's obligation
25 under that agreement to deliver effluent to the Resort. So, when Ms. Madden
26 testifies or implies that BMSC has an obligation to supply or pay for an alternative

1 source of irrigation water to the Resort in the event of an ordered plant closure, she
2 is simply wrong.

3 Similarly, the Resort is wrong when it claims that the Commission would be
4 trampling on the Resort's contractual rights by ordering plant closure. First, the
5 Commission is not a party to the Effluent Delivery Agreement. Second, the parties
6 to the Effluent Delivery Agreement specifically contemplated that there very well
7 might be an order closing the plant and expressly agreed that the Company's
8 obligation to supply effluent would then cease.

9 In other words, the Resort knew at the outset of the Effluent Delivery
10 Agreement that it might need to find an alternative effluent source before 2021 and
11 pay for it. The effect of an order closing the plant should not come as a surprise to
12 the Resort, nor does it trample on their alleged rights; represented by counsel, they
13 voluntarily struck a bargain with the Company that in the event of an ordered plant
14 closure they would not have any more rights to effluent from BMSC.

15 **Q. WHAT ABOUT THE RESORT'S CLAIM THAT THE COMPANY AND**
16 **BHOA ARE ESSENTIALLY MISLEADING THE COMMISSION INTO**
17 **CLOSING THE PLANT AND THE RESORT "NEEDS TO BE HEARD"?**

18 **A.** I recently attended the depositions of the Resort's witnesses — Ms. Madden,
19 Mr. McCann, and Mr. Hunter. Each works on the Resort property near the plant.
20 They were questioned and heard. None of them could identify what the Company
21 or BHOA has allegedly done wrong or how they have misled the Commission. To
22 the contrary, each of the Resort representatives admitted that the Company was
23 properly operating the plant, complying with the Effluent Delivery Agreement, and
24 acting in good faith in its dealings with the Resort and in its attempts to find a
25 solution. It is also clear that the Resort is the *only* person or entity that wants the
26 plant open and that the plant is situated in the middle of a residential community

1 that wants it closed because of, among other things, normal operating odors emitted
2 by the plant.

3 In addition, as described below, even though the Resort recognizes, or
4 should recognize, that it has the onus to find a solution to its *alleged* effluent
5 shortage upon plant closure, it has done shockingly little to seek such a solution.

6 **III. THE RESORT'S NEED FOR OUR EFFLUENT DOES NOT APPEAR TO**
7 **BE CRITICAL.**

8 **Q. DOES THE RESORT PURCHASE ALL OF THE EFFLUENT**
9 **GENERATED BY THE COMPANY'S TREATMENT OF WASTEWATER?**

10 A. Yes, and it is roughly 130 to 135 acre-feet annually as the Resort's witnesses
11 testified.

12 **Q. MR. HUNTER TESTIFIES THAT THE RESORT "COULD NOT**
13 **OPERATE AT THE SAME LEVEL" WITHOUT EFFLUENT FROM THE**
14 **COMPANY. HOW DOES THE COMPANY RESPOND?**

15 A. We respectfully disagree based on the facts provided by the Resort. According to
16 the Resort, our effluent covers only 15 percent of their water irrigation needs and
17 approximately 10 percent of their irrigation water capacity.¹ Further, it appears the
18 need is really limited in time to when the golf course is "overseeding" during a
19 portion of September and October.²

20 **Q. WHAT IS "OVERSEEDING"?**

21 A. Based upon my familiarity with golf, "overseeding" generally refers to a
22 maintenance process on golf courses in which grass seed is spread on top of the
23 existing grass to promote new growth or to swap out seasonal turfs, replacing one
24 type of grass with another. And it makes sense that during those times when they

25 ¹ See Direct Testimony of Dean Hunter ("Hunter DT") at 3:11-14.

26 ² *Id.* at 5:4-5.

1 are basically growing new grass, their water needs would increase. What doesn't
2 make sense to us though is why the Resort can't manage this seasonal increase in
3 water demand by emplacing and using additional storage.

4 **Q. WOULD YOU PLEASE EXPLAIN WHAT YOU MEAN?**

5 A. Prudent and reasonable water utilities and water users utilize storage to manage
6 water resources. Sometimes the demand in a given time frame outpaces the source,
7 such as a well. We deal with that demand spike by storing water during times
8 when supply is greater than demand, ensuring that water is available for periods
9 when demand exceeds supply. In fact, in the water industry we don't call them
10 lakes; we call them water retention structures – yes, they're pretty, but their
11 purpose is to hold water until it's needed for irrigation purposes. In other words,
12 proper use of water storage extends the use of available water supplies.

13 **Q. COULD ADDITIONAL STORAGE REPLACE THE RESORT'S NEED**
14 **FOR EFFLUENT FROM THE COMPANY?**

15 A. The Resort does not seem to think so but I do not find their analysis adequate.³
16 And when we have suggested this to them as the most cost-effective and
17 responsible way of dealing with their long-term need for water during their annual
18 seasonal overseeding, they rejected it without a basis or further dialogue.

19 **Q. IS THAT WHY YOU BELIEVE THE RESORT HAS NOT GIVEN**
20 **ADEQUATE CONSIDERATION TO STORAGE OPTIONS?**

21 A. Yes. I have seen no analysis from them, mathematical or otherwise, demonstrating
22 why additional storage, either a new lake/reservoir or deepening existing ones,
23 would not work.

24
25
26 ³ *Id.* at 5:16-26.

1 Q. WHAT WOULD YOU HAVE EXPECTED TO SEE IF THE RESORT HAD
2 ADEQUATELY ANALYZED THIS OPTION?

3 A. I can only explain how I would do it if I were in their position: I would start with
4 the 10-year daily water supply from both BMSC's effluent and the RWDS line,
5 that would give me my baseline supply of effluent, let's call that E. Then I would
6 determine the total daily capacity I could safely withdraw from my own storage,
7 let's call that St, so I would know how much water I could access on any given
8 day, it would be $E + St$. I would plot that data on a line over the course of a year.

9 Next, I would look at 10-years of daily water usage data and overlay that
10 data with the $E + St$ line of accessible daily water. With those two lines, the usage
11 line and the accessible daily water line, I would be able to identify all the peaks and
12 valleys – the times I have more than I need, and the times I have less than I need.

13 I would then look at my existing storage, plus various levels of additional
14 storage that I could construct to determine whether I could use storage to meet my
15 water shortfalls on any days they exist. I would perform that analysis both with
16 BMSC effluent being available, and without it.

17 And I would do all of this not just because the plant is at issue right now in
18 2012 – with a potential to close in the next year or two – but because as key parts
19 of a world-class resort in the Arizona desert, facing drought pressures and CAP
20 challenges, and with a contract certain to expire no later than 2021, I would be
21 focused on ensuring the golf courses had available, affordable water options.

22 Another analysis that can be performed is to compare the daily water supply
23 from the RWDS line versus daily water demands (plus evaporation losses) during
24 overseeding, determine the daily deficit, and then sum the daily deficits to
25 determine the required amount of storage necessary to get through an overseeding
26

1 period. To determine the required lake surface area, perhaps, they also would have
2 set parameters around how much variability in lake levels would be acceptable.

3 **Q. WHAT ABOUT THEIR CONCERN THAT LOW LAKE LEVELS WOULD**
4 **DAMAGE LINERS OR BE UNATTRACTIVE TO GOLFERS?**

5 A. While I understand that this could be a valid concern, it's also my understanding
6 that irrigation water at the Resort is transferred between lakes via pumps. They do
7 not utilize gravity lines, so additional storage can be easily managed and
8 transferred between lakes. This means lakes would not sit empty for extended
9 periods of time. Lake levels would only lower during overseeding periods when
10 demand exceeds supply. As to odor, many golf courses utilize lakes for storage of
11 water without odor issues. The new facilities would be using the same water as the
12 existing facilities, which to my knowledge don't currently "smell." It should also
13 be noted that this could address the Resort's long-term water issue, beyond the
14 termination of the Effluent Delivery Agreement.

15 **Q. DO YOU AGREE WITH MR. HUNTER'S ARGUMENT THAT**
16 **ADDITIONAL CONSERVATION MEASURES WOULD NOT BE**
17 **ADEQUATE?**

18 A. I don't think we can agree with that conclusion either because it appears that it isn't
19 a matter of additional conservation not working. Instead, it appears that the Resort
20 has rejected additional conservation measures based on other factors, namely their
21 perception of what makes their business most attractive at the lowest cost.

22 **Q. HOW DID YOU REACH THAT CONCLUSION?**

23 A. From Mr. Hunter's testimony. He testifies that reducing turf and other vegetation
24 wouldn't be "acceptable" for aesthetic reasons.⁴ He also testifies that the Resort
25

26 ⁴ *Id.* at 4:1-14, 5:6-15.

1 rejected the idea of using a more water efficient irrigation system, primarily
2 because it's too costly.⁵ I was surprised that the Resort doesn't already have the
3 most efficient irrigation system it can have in place. First, this is not a small golf
4 course trying to compete with bigger entities – this is two world-class golf courses
5 at a world-class Waldorf Astoria resort owned by Hilton Worldwide, a Fortune 500
6 company. Often when we talk about conservation, one of the first challenges is
7 helping the customer pay the upfront costs to capture the long term gains – in this
8 case the customer is vastly larger than Liberty and its parent, APUC.

9 The second thing that surprises me is this is the desert, and good corporate
10 stewardship would seem to dictate such measures be taken by golf courses in the
11 ordinary course of business. The same can be said of the additional 2-3 percent
12 water reductions the Resort says it could make, but apparently chooses not to,
13 because the result won't be enough to replace our effluent.⁶ Maybe it is a
14 difference of perspective but operating water utilities in Arizona and Texas – two
15 states at the heart of U.S. water supply challenges – has taught us to vigorously
16 pursue every opportunity to save water.

17 **Q. ARE YOU SUGGESTING THAT THE RESORT ACTUALLY CAN**
18 **OPERATE AT THE SAME LEVEL WITHOUT THE COMPANY'S**
19 **EFFLUENT BY BUILDING MORE STORAGE AND ADOPTING**
20 **ADDITIONAL CONSERVATION MEASURES?**

21 **A.** Yes, I am suggesting that, or at least that it might be possible, but we do not know
22 with certainty due to the Resort deciding to abandon the cooperative search for
23 resolution last summer in favor of threatened litigation. After having read the
24 Resort's filing and sitting through the depositions, I can honestly say I wish we had

25 ⁵ *Id.* at 4:15-22.

26 ⁶ *Id.* at 4:22-25.

1 been given the opportunity to continue evaluating options like storage and
2 additional conservation in tandem. The Resort has every right to make its own
3 business decisions, but their actions and their inactions have left the Company, its
4 customers and the Commission unable to take steps that have already been
5 determined to be in the public interest.⁷

6 What's more difficult to understand is why the Resort continues to take
7 these positions given that we are talking about how to help them resolve *their* water
8 challenges, including their long-term supply issues. We are trying to work with
9 them to provide *them* with the ability to operate their business – even the Resort
10 recognizes that this water will not be available to them forever.

11 **IV. THE RESORT IS GOING TO HAVE TO INVEST IN ITS FUTURE IF IT**
12 **WANTS TO CONTINUE TO OPERATE AT THE SAME LEVEL.**

13 **Q. BUT MR. SORENSEN, ISN'T THE RESORT'S CONCERN HAVING TO**
14 **PAY TO SOLVE SOMEONE ELSE'S PROBLEM, I.E., THE**
15 **HOMEOWNERS?**

16 **A.** I can't speak for the Resort. What I am saying is that the Resort needs to realize
17 that this is their problem and they are going to have to spend money to continue to
18 "operate at the same level." The only real questions are: when, on what, and how
19 much? And we are further away from answering those questions than we hoped to
20 be because of the Resort's business decision last summer. In fact, all we seem to
21 be doing now is spending money on legal proceedings.

22 I think the issue needs to be dealt with now because water isn't going to get
23 cheaper in Arizona. The EPA fight over the Navajo Generating Station could,
24 according to the CAP's public messages, double the price of CAP water. And that

25
26 ⁷ See Decision at 49:13-18.

1 puts more demand on reclaimed water supplies that are already limited, so their
2 market value will go up as well. And with supplies limited and prices increasing,
3 conservation becomes an economic imperative. So what I'm saying is: this is the
4 Resort's problem, now is the time to deal with it, and storage and conservation are
5 the very best ideas we have for them today – and they simply reject them without
6 basis or dialogue.

7 **Q. THEN HOW DO YOU RESPOND TO MS. MADDEN'S TESTIMONY**
8 **THAT THE RESORT "EXPECTS BMSC TO CONTRIBUTE**
9 **FINANCIALLY TO A SOLUTION"?**

10 **A.** The immediate and most obvious answer is that we are making a substantial
11 financial contribution to further the public's interest in removing our fully
12 compliant and used and useful wastewater treatment plant. And we are making
13 significant contributions in the amount of time, resources, and effort we have put
14 into this everlasting process of trying to convince them to work with us on finding
15 a solution for their water problem.

16 **Q. TRUE, BUT ISN'T MS. MADDEN REFERRING TO WHAT SHE**
17 **BELIEVES TO BE THE COMPANY'S OBLIGATION TO REPLACE THE**
18 **EFFLUENT PER THE TWO PARTIES' AGREEMENT?**

19 **A.** She may be. It is difficult to understand where she is coming from given that the
20 express terms of the Effluent Delivery Agreement contemplate that an order
21 closing the plant terminates the Company's obligation to deliver effluent.
22 Nevertheless, the Company is trying in good faith – as acknowledged by each of
23 the Resort's principal witnesses in their depositions – to resolve the situation. And
24 that's why I have testified here that the Resort needs to realize that this is their
25 problem and they are going to have to spend money to continue to "operate at the
26 same level." The Resort has enjoyed purchasing relatively inexpensive effluent

1 from the Company over the past decade, and has profited from this practice. I am
2 suggesting that time is rapidly coming to an end because of what is best for the
3 public interest – an interest the Resort is willfully ignoring.

4 **Q. BUT WHY SHOULD THE RESORT JUST “ROLL OVER”?**

5 A. I think the best way to illustrate my point is to look at the two possible outcomes to
6 this situation. Scenario one, the Commission or the court in the Marshall lawsuit,
7 or both, orders us to close the plant and we write a letter to the Resort telling them
8 that our agreement has been terminated by that action of the court or Commission,
9 or both. I discussed the relevant contract language earlier in my testimony.⁸

10 **Q. AREN'T YOU CONCERNED THAT THE RESORT WILL SUE THE**
11 **COMPANY?**

12 A. Absolutely. They have already threatened to do so.⁹ That threat or, more
13 specifically, the mere possibility that they might go through with it, is exactly why
14 we are asking the Commission to ensure that our customers who want the ACC to
15 order the plant closed indemnify us from the one customer who doesn't. Just
16 because the Resort's suit would lack merit does not mean it won't add to the cost of
17 closing the plant.

18 **Q. WHAT DO YOU MEAN WHEN YOU SAY “INDEMNIFY”?**

19 A. That the reasonable and prudent costs of closing the plant, which in this case
20 includes litigation costs, be part of our rate base and, ultimately, our revenue
21 requirement. We understand these costs will be subject to scrutiny. But we don't
22 think we are wrong in expecting to recover the costs of furthering what the
23 Commission finds to be in the public interest. That's how regulation works.

24
25 ⁸ Section II, *supra*.

26 ⁹ Direct Testimony of Gregory S. Sorensen (“Sorensen DT”) at Exhibit GS-DT2-B.

1 **Q. WHAT WILL THE RESORT DO IF THE PLANT IS ORDERED CLOSED?**

2 A. I have no idea. What I do know is this: a lawsuit isn't going to water the golf
3 course. I do not see that the Resort has *any* sort of back-up plan in the event
4 BMSC's effluent becomes unavailable for whatever reason. In fact, they admitted
5 as much during their depositions. They had no plan for contract termination now
6 or in March 2021. At best, the Resort might receive our effluent until March 2021.
7 But the agreement itself expressly contemplates and authorizes the possibility of
8 termination prior to 2021. Therefore, if our effluent really is critical to their
9 business, one would think they would have a back-up plan. Instead, it appears that
10 the Resort, having ignored what the contract says, has assumed that the plant will
11 be there as long as they need it to be to produce effluent for their needs.

12 **Q. COULD IT BE THAT THEY EXPECT YOU TO BUILD ANOTHER PLANT**
13 **TO REPLACE THIS ONE SOMETIME BEFORE 2021?**

14 A. I hope not because, among other things, it is not technically feasible or fiscally
15 preferable. The costs and logistics make it very impractical, and the neighboring
16 property owners may make it impossible. In addition, we have the opportunity to
17 buy treatment capacity from the City of Scottsdale at \$6 per gallon through 2016.
18 That option renders building our own new treatment facility the less preferable
19 option.

20 **Q. WHY WOULD IT BE INFEASIBLE AND IMPRACTICAL?**

21 A. As I explained in my direct testimony, we already evaluated the location mentioned
22 in Ms. Madden's testimony.¹⁰ While it *might* be physically possible to locate a
23 new plant there, we don't think we could get another plant permitted in the midst of
24 the Boulders community. And even if we could, it would be very expensive,
25

26 ¹⁰ See Sorensen DT at 3:21 – 4:7; Direct Testimony of Susan Madden at 9:17-27.

1 possibly as much as \$30 per gallon, or \$3.6M just for the plant itself. I don't know
2 how anyone can justify an investment of that magnitude so that the Resort can
3 oversee its golf courses every other year. Certainly our shareholders would
4 require ironclad assurance that they would recover a return on and of that
5 investment before funding a new plant for the Resort.

6 **Q. IS THAT THE ONLY POSSIBLE SITE FOR A NEW TREATMENT**
7 **FACILITY?**

8 A. It is the only site near the Resort of which we are aware. This is a fully developed
9 community and the further we have to go, the more it will cost the Resort for a new
10 effluent delivery system.

11 **Q. THANK YOU. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE**
12 **POSSIBLE OUTCOMES.**

13 A. The second possible outcome is that neither the Commission nor the court orders
14 closure of the plant.

15 **Q. ISN'T THAT WHAT THE RESORT WANTS?**

16 A. Yes, but that may not come without a significant price as well. For starters, the
17 Resort is *the only one of our customers* we are aware of that wants the plant to
18 remain open. Virtually everyone else in the community wants the plant closed. If
19 the plant does not close, we will have a lot of customers seeking other ways to
20 close the plant – we may well see more lawsuits like the Marshall case.
21 Additionally, representatives of the BHOA have already informed us that if the
22 Commission does not order the plant closed, they will seek to force another rate
23 case and ask the Commission to redesign our rates. In sum, not closing the plant
24 will make a bad situation worse.

1 **Q. REDESIGN THE RATES IN WHAT MANNER?**

2 A. Well, if the plant has to stay open for the Resort, I suspect that the BHOA will
3 assert that the Resort should pay 100 percent of the costs of the plant. If the
4 Commission requires the Resort to pay a rate that recovers all of the hard costs of
5 the plant, i.e., operating costs plus return dollars, and a "community" cost, akin to
6 how the Commission sets water rates in a desert where greater use of water has a
7 "societal" cost, the Resort is going to pay a whole lot more money for our effluent.
8 That's why I testified earlier that the Resort needs to realize that this is their
9 problem too and they are going to have to spend money to solve it.

10 **Q. IS THE COMPANY FOR OR AGAINST CLOSURE OF THE PLANT?**

11 A. Neither. Although our plant is fully compliant and used and useful, because of
12 issues with odor and because the plant is in the middle of a residential community,
13 all but one of our ratepayers wants the plant removed as a matter of public
14 convenience. In that light, we wish to make sure the Commission understands the
15 consequences of ordering closure, and to ensure we are given every opportunity to
16 recover the costs of closing the plant.

17 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

18 A. Yes.
19
20
21
22
23
24
25
26



MCBRIDE ENGINEERING SOLUTIONS, INC.
6100 W. Gila Springs Place, Suite 7, Chandler, AZ 85226

MEMORANDUM

TO: TOM NICHOLS, P.E. – LIBERTY WATER
FROM: BRIAN MCBRIDE, P.E.
COPY: DEBRA MCGREW, P.E. – MES
SUBJECT: ***BMSC – CAVE CREEK FORCE MAIN AND REUSE LINE COST ESTIMATE***
DATE: MAY 4, 2012

Liberty Water has asked MES to provide an order-of-magnitude cost estimate for the installation of a new sewer force main and a new reclaimed water line to connect part of the Black Mountain Sewer Corporation (BMSC) sewer and reclaimed water systems to the Town of Cave Creek systems. The purpose of the pipeline installations would be to direct all wastewater flows from the BMSC Commercial Lift Station to the Town of Cave Creek and to provide up to 120,000 gallons per day of reclaimed water from the Town to the Boulders Golf Course.

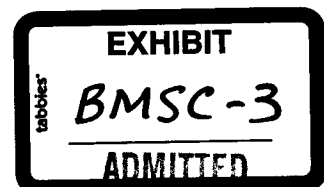
MES examined the proposed routes for the force main and reclaimed water lines. The hand-sketch modifications to the maps provided in Attachment A and Attachment B indicate the proposed routes. To develop the cost estimate MES relied on the following parameters and assumptions:

- The sewer force main would actually consist of 600 feet of dual 8-inch force mains and 1,920 feet of single 8-inch gravity sewer.
- The existing pumps in the Commercial Lift Station are sufficient to convey the wastewater through the new force main.
- The reclaimed water line would consist of about 12,270 feet of 6" PVC pressure pipe.
- The water pressure in the Cave Creek reclaimed water system at the Carefree Highway and Cave Creek Road is 200 psig.
- The design flow capacity for the reclaimed water line is 200 gpm.

The details of the order-of-magnitude cost estimate calculations are provided in Attachment C. The costs are summarized as follows:

➤ Sewer force main and gravity line construction:	\$546,000 — \$1,152,000
➤ Reclaimed water line construction:	\$1,324,000 — \$2,344,000

Together, the estimated cost to construct both systems is between \$1.9M and \$3.5M. The reason for the large range in the cost estimates is the lack of available information regarding the subsurface bedrock that would require excavation in the proposed routes. The lower estimate assumes a limited amount of rock, while the higher estimate assumes a more significant amount of rock. A more precise estimate of costs





MCBRIDE ENGINEERING SOLUTIONS, INC.
6100 W. Gila Springs Place, Suite 7, Chandler, AZ 85226

could be developed if a route investigation, including a seismic survey, was completed. MES anticipates that such an investigation would cost about \$15,000 and could be completed in approximately four to six weeks.

If you have any questions or need further clarification of the information contained in this memorandum, please feel free to email me at bmcbride@mcbrideengineering.net or call me at (480) 759-9608, extension 221. Thanks.

Brian McBride, P.E.

McBride Engineering Solutions, Inc.

ATTACHMENT A (cont.)

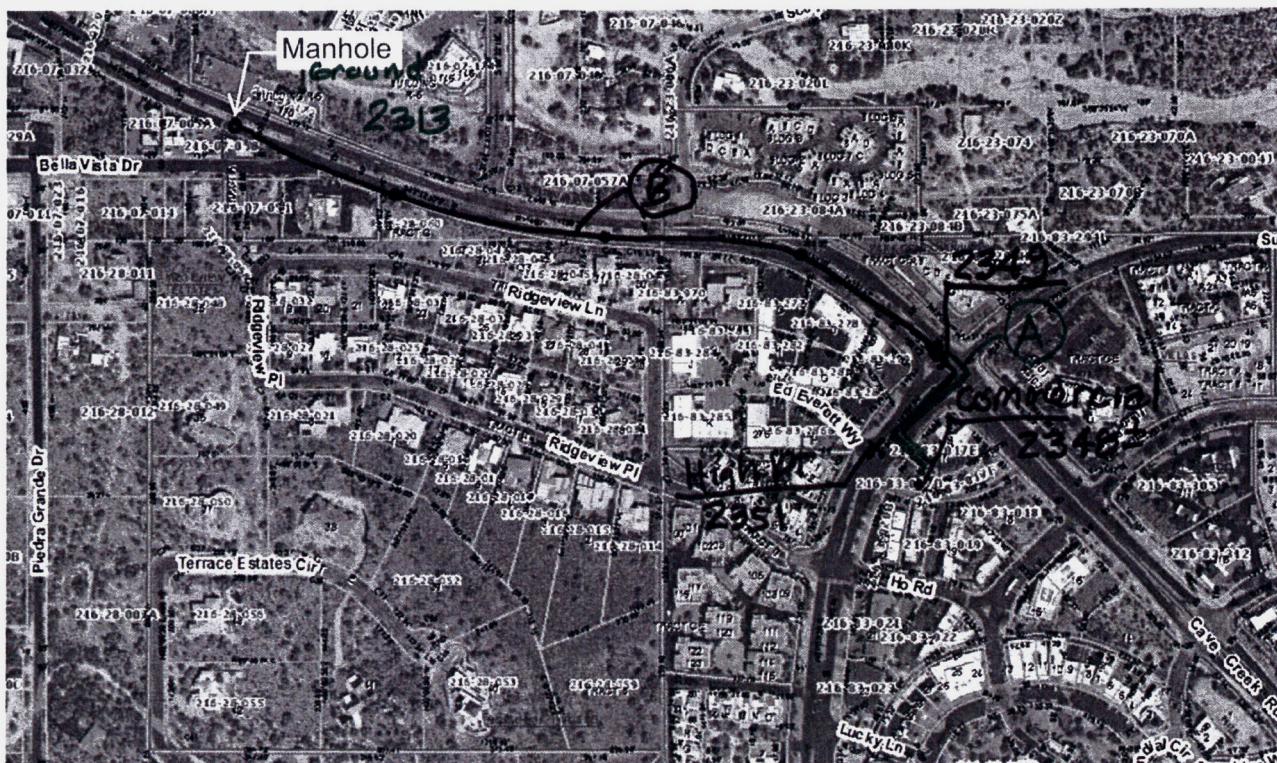


Google earth

feet 1000
meters 400



ATTACHMENT A

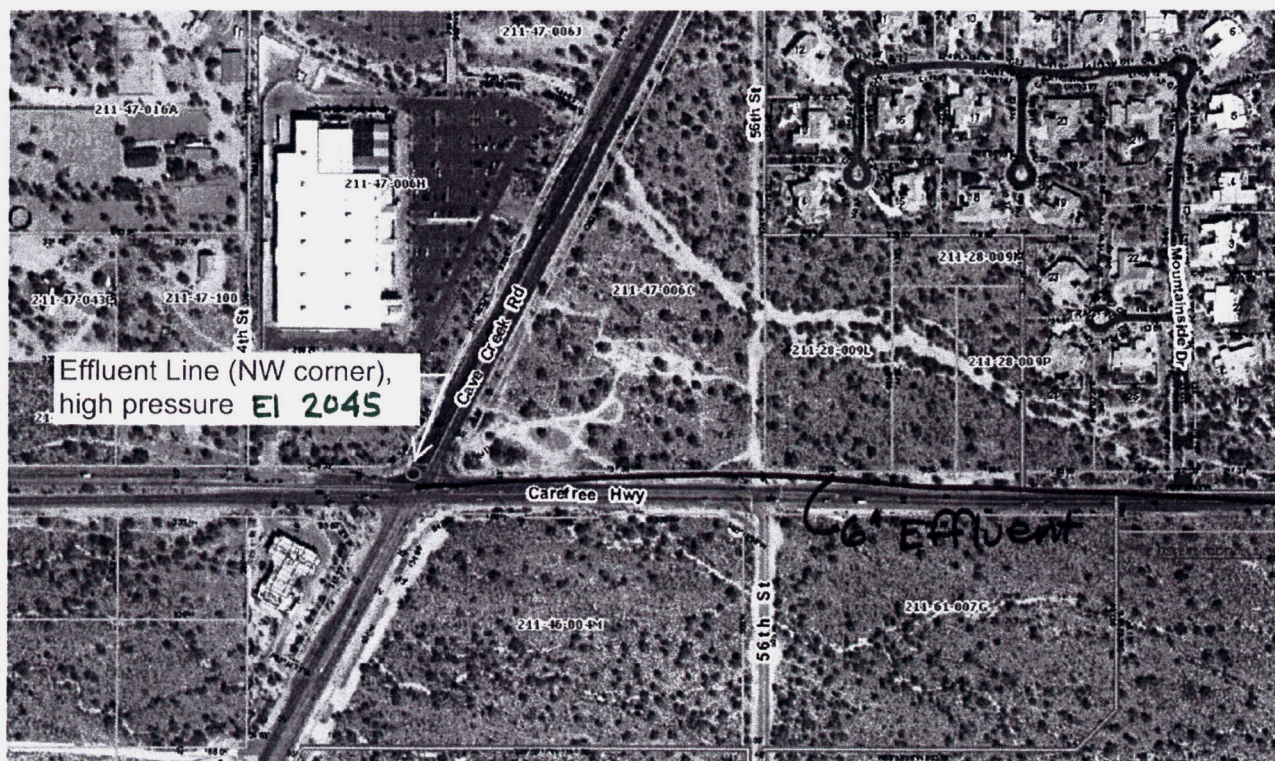


Ground El @ MH ~ 2313 — B (assumed depth may be shallow; code 5' min)

To be safe assume we need dual force mains until we get just west of Cave Creek Rd & Tom D.

- (A) == dual 8" FM approx length ~ 650'
- (B) — 8" Gravity Sewer approx length ~ 1920'
4 manholes ~ 440' spacing

ATTACHMENT B



Pressure (per CC) 200 psig HGL EI $\sim 2507 \pm$

High pt elev along Carefree Hwy @ N Scottsdale Rd ~ 2266

Distance to Scottsdale Rd & Carefree Hwy $\sim 10,620'$

H_L in a 6" @ 200 gpm $\sim 4'/1000'$ or $\sim 43' \pm$

L. Lake el @ discharge ~ 2307 Residual press ~ 200 ft
 minus losses of $43'$, leaves $157'$ of pressure @ lake
 or 68 psig,
 works.

See attached for route to Lower Lake

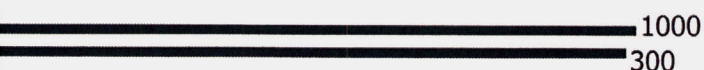
Boulders WRP Discharge to GC $\rightarrow 120,000$ gpd
 over 24 hrs ~ 83 gpm, over 12 hrs ~ 167 gpm
 Use 200 gpm for effluent line req'd cap.

ATTACHMENT B (cont.)



Google earth

feet
meters



— Potential route of effluent line to Lower Lake

Distance ~ 1650 ft

Elevations

@ Carefree & Scottsdale Rd ~ 2266

@ Lower Lake ~ 2307

Residual pressure in eff Line @ Lower Lake ~ 200 ft
or 86 psis
(need to subtract pipeline losses)

ATTACHMENT C - COST ESTIMATES

Black Mountain Sewer Corporation Connection to Town of Cave Creek Sewer System

<u>Item</u>	<u>Dia</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Total Unit \$</u>	<u>Total \$</u>
1		Connect to CC manhole (above bench)	1	Ea	\$ 2,500.00	\$ 2,500
2	8	-in sewer Cave Creek Road	1920	LF	\$ 48.00	\$ 92,200
3		Rock excavation (CC connection)	1920	LF	\$ 157.00	\$ 301,400
4		Pavement replacement	1920	LF	\$ 76.00	\$ 145,900
5	4	-ft dia manholes	4	Ea	\$ 3,000.00	\$ 12,000
6	8	-in dual Force Main (CC connection)	650	LF	\$ 72.00	\$ 46,800
7		Rock excavation (CC connection)	650	LF	\$ 98.00	\$ 63,700
8		Pavement replacement	650	LF	\$ 76.00	\$ 49,400
9		Remove Ex Drywell	1	LS	\$ 5,000.00	\$ 5,000
10		Relocate existing electrical panels & rewire	1	LS	\$ 15,000.00	\$ 15,000
11		Install new 6-ft wetwell	20	VF	\$ 1,200.00	\$ 24,000
12		JPC coating of wetwell & hatches	434	SF	\$ 80.00	\$ 34,700
13		Abandonment exist FMs - slurry	20150	LF	\$ 3.00	\$ 60,500
Subtotal					\$	853,100
Contingency					20%	\$ 170,600
Engineering & Const admin					15%	\$ 128,000
Total (significant rock)					\$	1,152,000

Assumptions (for worst case scenario)

- 1 Elevations and lengths taken from Google Earth
- 2 The new BMSC connection to Cave Creek's manhole would be above the shelf (bench)
- 3 The force main portion is only required to just past Tom Darlington because ground slopes to CC's sewer
- 4 Cost of excavating for the force main will be less because of shallow depth (4 vs 6 to 8 ft)
- 5 The cost of excavating in rock is from the Town of Cave Creek based on their experience
- 6 Depth of gravity portion would be between 6 and 8-ft along CC Rd
- 7 Manhole spacing would be approximately 440-ft
- 8 New pumps at Commercial would only have to pump the lift to the CC Rd just west of Tom Darlington
- 9 Pavement replacement would be required for full alignment
- 10 New force mains would be 8-inch dia because **ONLY** one FM can be in service at a time (MCESD code)
- 11 Gravity portion of the sewer would be an 8-inch sewer

Calculations and/or measurements (taken from Google Earth)

- 1 Ground elevation at CC sewer (Bella Vista) is approx 2313
- 2 Ground elevation at CC Road & Tom D is approx 2349
- 3 High point occurs in Tom D - due west of the Commercial LS and is approx 2351
- 4 Ground elev at Commercial (Google's) is approx 2348
- 5 Distance from Commercial LS to CC RD just past Tom D (out of intersection is 650-ft
- 6 Distance from just past Tom D to CC's last manhole is approx 1920-ft

ATTACHMENT C - COST ESTIMATES (cont.)

Black Mountain Sewer Corporation Connection to Town of Cave Creek Sewer System

<u>Item</u>	<u>Dia</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Total Unit \$</u>	<u>Total \$</u>
1		Connect to CC manhole (above bench)	1	Ea	\$ 2,500.00	\$ 2,500
2	8	-in sewer Cave Creek Road	1920	LF	\$ 48.00	\$ 92,200
3		Rock excavation (CC connection)	384	LF	\$ 157.00	\$ 60,300
4		Pavement replacement	384	LF	\$ 76.00	\$ 29,200
5	4	-ft dia manholes	4	Ea	\$ 3,000.00	\$ 12,000
6	8	-in dual Force Main (CC connection)	650	LF	\$ 72.00	\$ 46,800
7		Pavement replacement	650	LF	\$ 76.00	\$ 49,400
8		Remove Ex Drywell	1	LS	\$ 5,000.00	\$ 5,000
9		Relocate existing electrical panels & rewire	1	LS	\$ 12,000.00	\$ 12,000
10		Install new 6-ft wetwell	20	VF	\$ 1,000.00	\$ 20,000
11		JPC coating of wetwell & hatches	434	SF	\$ 80.00	\$ 34,700
12		Abandonment exist FMs - slurry	20150	LF	\$ 2.00	\$ 40,300
Subtotal					\$	404,400
Contingency					20%	\$ 80,900
Engineering & Const admin					15%	\$ 60,700
Total (minimal rock)					\$	546,000

Assumptions (for best case scenario)

- 1 Elevations and lengths taken from Google Earth
- 2 The new BMSC connection to Cave Creek's manhole would be above the shelf (bench)
- 3 The force main portion is only required to just past Tom Darlington because ground slopes to CC's sewer
- 4 Cost of excavating for the force main will be less because of shallow depth (4 vs 6 to 8 ft)
- 5 Only 20% of sewer alignment in within rock
- 6 The cost of excavating in rock is from the Town of Cave Creek based on their experience
- 7 Depth of gravity portion would be between 6 and 8-ft along CC Rd
- 8 Manhole spacing would be approximately 440-ft
- 9 New pumps at Commercial would only have to pump the lift to the CC Rd just west of Tom Darlington
- 10 Only 20% of sewer alignment would require pavement replacement
- 11 New force mains would be 8-inch dia because **ONLY** one FM can be in service at a time (MCESD code)
- 12 Gravity portion of the sewer would be an 8-inch sewer
- 13 New force main alignment would be in disturbed soils - no rock

Calculations and/or measurements (taken from Google Earth)

- 1 Ground elevation at CC sewer (Bella Vista) is approx 2313
- 2 Ground elevation at CC Road & Tom D is approx 2349
- 3 High point occurs in Tom D - due west of the Commercial LS and is approx 2351
- 4 Ground elev at Commercial (Google's) is approx 2348
- 5 Distance from Commercial LS to CC RD just past Tom D (out of intersection is 650-ft
- 6 Distance from just past Tom D to CC's last manhole is approx 1920-ft

ATTACHMENT C - COST ESTIMATES (cont.)

Black Mountain Sewer Corporation

New Reclaimed Water Line to Lower Lake - along Carefree Highway

Item	Dia	Description	Quantity	Units	Total Unit \$	Total \$	Remarks
		Connect to CC system @ CCR	1 Ea		\$ 2,500.00	\$ 2,500	
		6 -in purple PVC	10650 LF		\$ 36.00	\$ 383,400	
		Rock excavation (Carefree Hwy)	5325 LF		\$ 157.00	\$ 836,000	assume 50% of alignment is in rock
		6 -in isolation valves at 1000-ft spacing	11 Ea		\$ 1,000.00	\$ 11,000	includes valve boxes
		2 -in ARV valve in Vault (ARI Style)	3 Ea		\$ 5,500.00	\$ 16,500	
		6 -in purple PVC (thru Boulders)	1650 LF		\$ 36.00	\$ 59,400	
		Rock excavation (Boulders)	1650 LF		\$ 157.00	\$ 259,100	
		Boulders Pavement Replacement	1520 LF		\$ 76.00	\$ 115,500	
		Slurry Seal	1520 LF		\$ 52.00	\$ 79,000	
		Control valve (vault)	1 LS		\$ 10,000.00	\$ 10,000	
		Control valve power	1 LS		\$ 5,000.00	\$ 5,000	
		PRV and Lake connection	1 LS		\$ 7,000.00	\$ 7,000	
		Subtotal			\$ 1,784,400		
		Contingency		20%	\$ 356,900		
		Engineering & Const admin		10%	\$ 202,500		
		Total (significant rock)			\$ 2,344,000		

Assumptions (for worst case scenario)

- 1 An alignment within Carefree Highway outside of the existing 2-lane paved road is possible
- 2 Approximately 50% of the alignment within Carefree Hwy will be in rock, the east 1/2 as you approach Scottsdale Rd
- 3 The cost of excavating in rock is from the Town of Cave Creek based on their experience
- 4 The alignment within the Boulders will be within the pavement - costs are based on DL Norton's previous experience in Boulder Dr
- 5 The cost of pavement replacement and slurry seal has been increased from DL Norton's 2009 estimate to account for price of oil in 2012
- 6 One control valve and vault would be required at the connection to CC effluent system to control flow to lake
- 7 Connection at the lake would be similar to other - cascading release (waterfall)

Calculations and/or measurements (taken from Google Earth)

- 1 Location of Cave Creek effluent line and pressure - provided by Town
- 2 Distance between CC Effluent line and Scottsdale Road = 10650 feet
- 3 Elevation at CC Rd and Carefree Hwy = 2045 Elevation at the Lower Lake = 2307
- 4 Pressure in CC Effluent system = 200 psig (or 461-ft), which results in a Hydraulic Grade line elevation at the connection point of 2507'
- 5 Max flow in the effluent line to the GC lake = 200 gpm (120,000 gallons delivered in 12 hrs)
- 6 Friction losses in the 6-in effluent line will be approx. 4'/1000' or 0.004 ft per foot of length, for a total of 43-ft of losses
- 7 The elevation of the lake fill of approx 2307 results in a max residual pressure of 200-ft or 86 psig
- 8 The min. residual pressure at the lake fill location would be 200-ft - 43-ft (friction losses) = 157' or 68 psig

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
BLACK MOUNTAIN SEWER CORPORATION,)
AN ARIZONA CORPORATION, FOR A) DOCKET NO.
DETERMINATION OF THE FAIR VALUE OF) SW-02361A-08-0609
ITS UTILITY PLANT AND PROPERTY AND)
FOR INCREASES IN ITS RATES AND)
CHARGES FOR UTILITY SERVICE BASED)
THEREON.)

DEPOSITION OF SUSAN MADDEN

Phoenix, Arizona
March 21, 2012

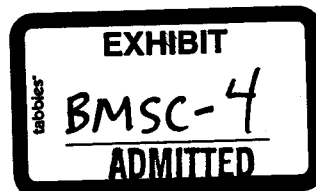
ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite 502
2200 North Central Avenue
Phoenix, Arizona 85004-1481

By: Kate E. Baumgarth, RPR
Certified Reporter
Certificate No. 50582

Prepared for:
THE COURT

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Phoenix, AZ

1 INDEX TO EXAMINATIONS

2 WITNESS PAGE

3

4 SUSAN MADDEN

5 Examination by Mr. Bourque 5

6 Examination by Mr. Wakefield 85

7 Examination by Ms. Mitchell 98

8

9

10

11

12

13

14 INDEX TO EXHIBITS

15 NO. DESCRIPTION MARKED IDENTIFIED

16 Exhibit 1 June 3, 2011 letter to 8 8
17 Mr. Shapiro from
18 Mr. Bellamy Re: The
Boulders v. Black Mountain
Sewer Corporation

19 Exhibit 2 Wastewater Treatment Plant 20 20
20 Closure Agreement

21 Exhibit 3 Effluent Delivery 28 29
22 Agreement

23 Exhibit 4 The Boulders Resort's 31 31
24 Motion to Intervene in
25 ACC case

26 Exhibit 5 Stipulation of Facts 88 88
in case before the ACC

1 DEPOSITION OF SUSAN MADDEN was taken on March 14,
2 2012, commencing at 9:30 a.m., at the law offices of
3 FENNEMORE CRAIG, 3003 North Central Avenue, Suite 2600,
4 Phoenix, Arizona 85012, before KATE BAUMGARTH, RPR,
5 Certificate Reporter No. 50582 for the State of Arizona.

6

7

8

9 APPEARANCES:

10 For Black Mountain Sewer Corporation:

11 BOURQUE LAW FIRM, P.C.
12 By: Mr. Arthur J. Bourque
13 1747 East Morten Avenue, Suite 105
14 Phoenix, Arizona 85020

15

and

16

17 FENNEMORE CRAIG, P.C.
18 By: Mr. Todd Wiley
19 3003 North Central Avenue, Suite 2600
20 Phoenix, Arizona 85012

21

For The Boulders Resort:

22

23 RYLEY CARLOCK & APPLEWHITE, P.A.
24 By: Mr. Fredric D. Bellamy
25 One North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4417

26

For the Arizona Corporation Commission Staff:

27

28 Ms. Robin Mitchell
29 Staff Attorney, Legal Division
30 1200 West Washington Street
31 Phoenix, Arizona 85007

32

1 For Boulders Homeowners' Association:

2 RIDENOUR, HIENTON & LEWIS, P.L.L.C.
3 By: Mr. Scott S. Wakefield
4 201 North Central Avenue, Suite 3300
5 Phoenix, Arizona 85004-1052
6

7 ALSO PRESENT:

8 Mr. Les Peterson
9 Mr. Paul Walker
10 Mr. Greg Sorenson
11
12
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25

1 SUSAN MADDEN,
2 called as a witness herein, having been first duly sworn
3 by the Certified Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:

5

6 EXAMINATION

7

8 BY MR. BOURQUE:

9 Q. Good morning. Please state your name.

10 A. Susan Madden.

11 Q. And who do you work for?

12 A. I work for Hilton Worldwide.

13 Q. Is Hilton Worldwide your employer?

14 A. Yes.

15 Q. Is that the entity that employs you?

16 A. Yes.

17 Q. Okay. I noticed in your testimony it said, "I'm
18 employed by Waldorf Astoria, LLC."

19 Can you tell me how that fits in with the Hilton
20 entity that you just mentioned?

21 A. Waldorf Astoria Worldwide is a Hilton brand, one
22 of the Hilton brand, and specifically Waldorf Astoria is
23 the managing agent for The Boulders within Hilton.

24 Q. And who do you report to at work?

25 A. Michael Hoffmann, with two Ns.

1 Q Who is Mr. Hoffmann employed by?

2 A Hilton Worldwide.

3 Q Do you know his position within Hilton?

4 A He is the managing director of The Boulders.

5 Q To your knowledge, is he the highest-ranking
6 person at -- on-site?

7 A Yes.

8 Q And then do you know who he reports to?

9 A He reports to Keith Clampet, C-l-a-m-p-e-t.

10 Q And where is Mr. Clampet located?

11 A He is a senior vice president with Hilton,
12 located in McLean, Virginia.

13 Q And then this indicates, this being your
14 testimony, that the resort is owned by Wind P1 Mortgage
15 Borrower, LLC.

16 Is that accurate?

17 A Yes.

18 Q And it is also accurate that you're director of
19 finance for the resort?

20 A That's correct.

21 Q Just summarywise, what are your job
22 responsibilities?

23 A My job responsibilities are the overall financial
24 administration of the resort, including all aspects of
25 financial accounting, reporting, budget, forecasting,

1 purchasing --

2 MR. PETERSON: Most of it.

3 THE WITNESS: Accounts payable, accounts
4 receivable, and then I liaise with all departments within
5 the resort and financial aspects.

6 BY MR. BOURQUE:

7 Q. Did you review any documents in preparation for
8 today's deposition?

9 A. Yes.

10 Q. What did you look at?

11 A. I looked at the Effluent Agreement with Black
12 Mountain Sewer, and the RWDS Agreement with the City of
13 Scottsdale.

14 Q. Other than counsel, did you chat with anybody?

15 A. No.

16 Q. Other than counsel, have you discussed this
17 matter with Mr. Hoffmann?

18 A. Specific to the deposition?

19 Q. Yes.

20 A. No.

21 Q. And that's a real good question. If you don't
22 understand any of my questions today, will you let me
23 know?

24 A. I will.

25 Q. Thanks. And then if it requires clarity, will

1 you let me know that, too?

2 A. I will.

3 Q. Thank you.

4 Who is the decision-maker within your company
5 when it comes to making decisions; for example, as it
6 relates to my client?

7 A. From a day-in/day-out management perspective,
8 those decisions -- well, depends on what the decision is.
9 It really does depend on what the decision is.

10 MR. BOURQUE: Let's mark Exhibit 1.

11 (Exhibit 1 was marked for identification.)

12 BY MR. BOURQUE:

13 Q. Exhibit 1 is a June 3rd, 2011, letter from
14 Mr. Bellamy to Jay Shapiro.

15 Do you see that?

16 A. Yes.

17 Q. Have you seen that before today?

18 A. Yes.

19 Q. Did you review it before it was sent to
20 Mr. Shapiro?

21 A. I don't recall if it was before or after.

22 Q. In the letter on page 2, Mr. Bellamy indicates
23 that, "Black Mountain Sewer's failure to acknowledge its
24 continuing obligation to The Boulders not only constitutes
25 an anticipatory breach of contract, but also demonstrates

1 bad faith in regard to Black Mountain Sewer's
2 obligations."

3 And then the next page Mr. Bellamy indicates,
4 "Specifically, we expect and demand that Black Mountain
5 Sewer agree to the following terms," and then there are
6 four terms.

7 That sort of decision-making to expect and demand
8 that Black Mountain agree to the following terms, do you
9 know who the decision-maker within the company is?

10 A. This letter arose from conversations with our
11 ownership. And the ultimate decision-makers in regards to
12 this -- these terms were our ownership.

13 Q. Who is ownership in the sense that you are using
14 it?

15 A. Wind P1 Mortgage Borrower, LLC.

16 Q. And specifically who within Wind P1 Mortgage?

17 A. There were a number of individuals involved.

18 Q. Could you name them, please.

19 A. Piero Bussani.

20 Q. I might need a spelling on that one.

21 A. B-u-s-s-a-n-i. Piero is one R, P-i-e-r-o.

22 Karen Sprogis, S-p-r-o-g-i-s.

23 Those were the two primary players. I can't
24 recall if there were other employee -- other ownership
25 representatives involved in those, too.

1 Q. Do those folks work in Arizona or outside?

2 A. Outside the state.

3 Q. Where?

4 A. One in New York. One in Boca Raton, Florida.

5 Q. Does Mr. Bussani work in New York?

6 A. Boca Raton.

7 Q. I had a 50 percent chance.

8 A. 50/50.

9 Q. And that means Ms. Sproegis works --

10 A. In New York.

11 Q. -- in New York.

12 And were they the two decision-makers vis-à-vis
13 this June 3rd letter, which is Exhibit 1?

14 MR. BELLAMY: Objection to form.

15 BY MR. BOURQUE:

16 Q. If you can answer, go ahead. If you need me to
17 rephrase, I will do that.

18 A. If you can rephrase.

19 Q. Sure. The June 3rd letter, page 3 indicates four
20 exceptions and four demands.

21 Were Mr. Bussani and Ms. Sprogis the people who
22 decided that the company was going to make those demands?

23 MR. BELLAMY: Objection to form.

24 BY MR. BOURQUE:

25 Q. Do you know?

1 A. They -- their decision was in concert with legal
2 counsel and hotel counsel.

3 Q. The first exception in demand set forth on page 3
4 of Exhibit 1 is that, "Black Mountain must cooperate with
5 and assist The Boulders in making arrangements for
6 replacement water pursuant to a plan that will ensure that
7 such water is available, and will be delivered without any
8 interpretation in service created by the closure of the
9 wastewater treatment plant, or any reduction in its
10 service leading up to that closure."

11 Do you believe that Black Mountain has agreed to
12 those terms?

13 A. I can't answer that question.

14 Q. With respect to the No. 2 in Mr. Bellamy's letter
15 at page 3, "In the event that any replacement water
16 secured under paragraph 1 above involves additional costs
17 beyond the amount that would have been owed by The
18 Boulders under the Effluent Delivery Agreement, then Black
19 Mountain Sewer will accept responsibility for paying or
20 reimbursing these costs," do you know if Black Mountain
21 has agreed to that?

22 A. They have not, to the best of my knowledge.

23 Q. Other than you, who has knowledge, to your
24 knowledge, of what Black Mountain Sewer has agreed to or
25 not agreed to?

1 A. Legal counsel.

2 Q. Anyone else within your company? And when I say
3 "within your company," today if we get an agreement that
4 it means anybody at Wind P1 Mortgage -- Wind P1 Mortgage,
5 or anybody at the Hilton entity, or anybody at Waldorf
6 Astoria, LLC.

7 Is that okay when I say "company" --

8 A. Yes.

9 Q. -- I'm being broad?

10 Anyone else, other than local counsel, within
11 your company -- would anybody else within your company
12 have knowledge of any facts?

13 A. Tom McCahan would have knowledge of those facts
14 as well.

15 Q. And we will be chatting with Mr. McCahan later
16 today.

17 Why do you think he would have knowledge of those
18 sort of facts?

19 A. He has been equally involved in the process with
20 me.

21 Q. Has there been anybody else, other than counsel,
22 involved in the process, as you used that term, in dealing
23 with BMSC?

24 MR. BELLAMY: Objection to form.

25

1 BY MR. BOURQUE:

2 Q Let me rephrase the question.

3 Has anybody else within your company, as I
4 defined that term broadly, other than legal counsel, been
5 involved in dealing with Black Mountain Sewer, which is my
6 client?

7 A Not to my knowledge.

8 Q So, to your knowledge, it's you and Mr. McCahan,
9 other than your counsel, who have dealt with my client,
10 Black Mountain Sewer?

11 A Yes.

12 Q And just for purposes of today's deposition, I'm
13 going to refer to my client as Black Mountain Sewer.
14 That's the way that Mr. Bellamy referred to my client in
15 his letter.

16 Is that okay?

17 A That's fine.

18 Q How long have you worked for the company you work
19 for?

20 A Hilton?

21 Q Yes.

22 A Three years for Hilton.

23 Q Who did you work for before Hilton?

24 A I worked for WH -- Luxury Resorts & Hotels.

25 Q Is that related or affiliated in any way to

1 Hilton?

2 A. It is the company prior to Hilton coming into The
3 Boulders. It was the management company prior to the
4 Hilton.

5 Q. And how long did you work for that Luxury entity?

6 A. Three years.

7 Q. Who did you work for before that?

8 A. I worked for Hotel Orrington.

9 Q. Where was that located?

10 A. Evanston, Illinois.

11 Q. So is it fair to say for about six years you have
12 been working in a capacity as finance director relating to
13 The Boulders Resort?

14 A. Yes.

15 Q. So since about 2005 or '6?

16 A. '6.

17 Q. You started working, and then the economy melted
18 down. That must have been interesting.

19 What is your highest level of education?

20 A. I have completed two years of college.

21 Q. And what did you study there?

22 A. Predentistry.

23 Q. Have you ever been deposed before?

24 A. Yes.

25 Q. How many times?

1 A. Once, that I can recall.

2 Q. What sort of matter was that?

3 A. It was a personal matter.

4 Q. We don't need to go into it.

5 Have you ever given testimony in a case?

6 A. Yes.

7 Q. Was it that personal matter?

8 A. No.

9 Q. Was it a matter related to your six years at --
10 working in The Boulders?

11 A. No.

12 Q. Did you communicate information about this
13 matter -- and when I say "this matter," I mean the matter
14 before the Arizona Corporation Commission -- with
15 Mr. Bussani and Ms. Sproegis? In other words, if you get
16 an e-mail in or you get a letter in, do you convey it to
17 them?

18 A. I do, if they are not already in queue.

19 Q. And how else would they be in queue? And by "in
20 queue," I assume you mean, if they hadn't received it from
21 another source?

22 A. Correct.

23 Q. What other source would they receive?

24 A. Legal counsel.

25 Q. I noticed in your testimony that you indicated

1 that you're a golfer?

2 A. Yes.

3 Q. And you have golfed at The Boulders?

4 A. Yes.

5 Q. And you have -- I think you indicated that you
6 noticed some odors?

7 A. I have.

8 Q. How long have you been golfing at The Boulders?

9 A. About five and a half years.

10 Q. Do you know when you first started noticing any
11 odors?

12 A. I don't recall exactly when I began noticing the
13 odors. It was not initially on my -- when I first started
14 golfing.

15 Q. So you just testified that you didn't notice
16 odors initially when you first started golfing; is that
17 correct?

18 A. That's correct.

19 Q. And did you -- when you initially golfed, did you
20 golf on the same holes that you golfed on later?

21 A. Yes.

22 Q. In other words, it wasn't a function of, you
23 just, you know, moved over to a different section of the
24 course; is that correct?

25 A. That's correct. I golfed that same set of holes.

1 Q. Okay. When you have noticed odors, where have
2 you been?

3 A. On the north course, specifically between Holes 1
4 and 2.

5 Q. To the best of your recollection, when is the
6 first time you noticed odors in that area?

7 A. Several years ago.

8 Q. When you say "several years ago," it's now March
9 of 2012.

10 Do you think it was before or after the beginning
11 of 2010?

12 A. Prior.

13 Q. What makes you think that?

14 A. Because I would say it's three to four years ago,
15 which would put it prior to the beginning of 2010.

16 Q. So anywhere between 2008 and 2009 you first
17 started noticing odors?

18 A. Probably, yeah.

19 Q. And each time you have been on that north course
20 in or around the first and second hole since 2008/2009,
21 have you noticed odors each time have you been out there?

22 A. No. No.

23 Q. Okay. Do your best to summarize on what sort of
24 percentage you are noticing odors out there.

25 A. That I -- that is pure speculation on my part,

1 but as a guess, maybe 30 percent of the time.

2 Q. And we will learn a lot about your golf game. I
3 don't golf, but I have run on golf courses.

4 A. You don't want to know about my golf game.

5 You don't have to put that down.

6 Q. How often do you golf such that it takes you to
7 the north course, the first and second holes? Would you
8 be out there ten times a year or --

9 A. Absolutely ten times a year. Perhaps much more.

10 I typically golf once a week, and I would be on
11 the north course every other week. So probably 20 times a
12 year, allowing for being out of town and so forth.

13 Q. So 20 times a year in that north course
14 first-and-second-hole area?

15 A. Yes.

16 Q. And then 30 percent of that -- even a lawyer can
17 do the math -- is around six times; is that correct?

18 A. Correct.

19 Q. And when you have noticed the odor, has it been a
20 particular time of year or day? Have you correlated that?

21 A. I have not.

22 Q. Sitting here today, can you think about that?

23 A. I couldn't. I'm sorry.

24 Q. Okay. Have you done anything in those six or so
25 times in the last three or four years that you have

1 noticed odors in that north course area that you
2 described? Have you done anything, complained to anybody
3 or told anybody about it?

4 A. Not that I recall.

5 Q. What did the odor smell like?

6 A. It's a sewer smell.

7 Q. And on a level of 1 to 10, 10 being, you know,
8 overwhelmingly stinky and 0 being, you know, pristine
9 mountain air, what was the level of odor?

10 A. I would say it varies between a 6 and an 8.

11 Q. When did you first become aware of this Arizona
12 Corporation Commission proceeding that we are now involved
13 in?

14 A. Late 2009, early 2010.

15 Q. How did you become aware?

16 A. Mr. Peterson made me aware.

17 Q. Was that via e-mail or in person?

18 A. In person.

19 Q. What did he say?

20 A. We were in a meeting with Mr. Peterson, myself,
21 and Mr. Hoffmann, and he was discussing The Boulders
22 Homeowners' Association's intentions with regard to the
23 Arizona Corporation Commission and the plant.

24 Q. Prior to that, you did not know anything about
25 this Arizona Corporation Commission proceeding?

1 A. Correct.

2 Q. Do you know if anybody with your company did?

3 A. Not that I'm aware of.

4 MR. BOURQUE: Let's mark Exhibit 2, the
5 Wastewater Treatment Plant Closure Agreement.

6 (Exhibit 2 was marked for identification.)

7 BY MR. BOURQUE:

8 Q. Do you see Exhibit 2 in front of you?

9 A. I do.

10 Q. Have you ever seen this document before?

11 A. Yes.

12 Q. In what context?

13 A. It was provided by legal counsel.

14 Q. Do you see on page 1 of Exhibit 2, Subsection E,
15 as in Elvis? Do you see that paragraph there?

16 A. I do.

17 Q. It says, "As required by ACC Decision No. 69164
18 (December 5, 2006), BMSC has made substantial improvements
19 to its wastewater collection systems."

20 Do you see that?

21 A. Yes.

22 Q. Do you disagree with that, or do you have any
23 facts that you would like to share with us that are
24 contrary to that statement?

25 MR. BELLAMY: Objection to form.

1 BY MR. BOURQUE:

2 Q Do you disagree with the statement that BMSC has
3 made substantial improvements to its wastewater collection
4 systems?

5 A I do not.

6 Q You don't agree with it?

7 A I don't disagree.

8 Q You don't disagree.

9 Would there be anybody within your company, and
10 again using that word very broadly, who would have more
11 knowledge than you regarding what BMSC has done to its
12 wastewater collection systems?

13 A Are you speaking from a specific oversight of
14 anything that they have done, or general knowledge gained
15 by being there at the time?

16 Q Either, or.

17 A To my knowledge, there is no one that had
18 specific oversight of the activities of Black Mountain
19 Sewer when the improvements were being made. There are
20 individuals who were at The Boulders at the time that
21 might have a more general knowledge of when these
22 improvements were taking place and what they were supposed
23 to be doing, what they were, yeah.

24 Q And who might those folks be?

25 A Tom McCahan and Dean Hunter.

1 Q. Are you aware of any other entity -- other than,
2 you know, your employer, your company, are you aware of
3 any other entity or person that wants to keep the
4 wastewater treatment plant at The Boulders open?

5 A. I am not aware.

6 Q. I think in your testimony -- it may have been
7 Mr. McCahan's testimony -- there has been some comments
8 about having worked with either consultants or experts in
9 looking at any options for the -- to readdress the
10 situation.

11 Do you know if your company has retained or
12 spoken with any consultants or experts in terms of how to
13 remedy the situation out there?

14 A. In terms of -- specific remedies, meaning
15 specifically to remedy the odors?

16 Q. Yeah, we will take it one at a time. That's a
17 really good question.

18 To remedy --

19 A. That is why I'm here.

20 Q. Yeah. To remedy any odor issues.

21 A. I'm thinking back over the consultants. I do not
22 recall the consultants that we have retained talking about
23 specific remedies to the odor issues.

24 Q. That's obviously somewhat of a negative pregnant.
25 That says that the consultants were doing something else.

1 What sort of things were they looking at?

2 A. They were retained to assist us in finding
3 replacement water sources.

4 Q. Have you consulted with consultants or experts
5 for any other reason, other than finding replacement water
6 sources?

7 A. No, I don't believe so.

8 Q. Who were the consultants and/or experts that you
9 consulted with, vis-à-vis, obtaining replacement water
10 sources?

11 A. One of them was Tom Lacy at Fluid Solutions.

12 We also worked with McBride Engineering. I don't
13 remember the gentleman's name. He was retained by Black
14 Mountain Sewer, but we worked with him. And when I say
15 "we," I'm saying within the company. I didn't personally
16 work with him.

17 And we also met with Juergen Nick --
18 J-e-u-r-g-e-n is the first name. Nick is the last name --
19 with Perc Water.

20 I believe those are all the consultants.

21 Q. Do you know the time period you would have
22 retained Mr. Lacy -- and "you" meaning your company --
23 would have you retained Mr. Lacy or his company, Fluid?

24 A. I would have to check my records to be sure, but
25 I believe it to be late 2010 or early 2011, in that time

1 frame.

2 Q. And what was their task, if you know?

3 A. Mr. Lacy was working with us on groundwater and
4 recovery systems as an option.

5 Q. Do you know what he concluded?

6 A. He had a variety of conclusions -- a variety of
7 options presented. There was no one conclusion.

8 Q. To the best of your knowledge, can you share with
9 us what the variety of options were that Mr. Lacy provided
10 to you?

11 A. Oh, boy. See, now you are getting into technical
12 areas.

13 Q. Which is why I hedged "to the best of your
14 knowledge."

15 A. To the best of my knowledge, it was actually
16 surrounding if we were able to get groundwater, how would
17 we proceed with taking groundwater and moving into a
18 recovery system, replenishing water within the aquifer --
19 is that the right word -- and he walked through that
20 process, where that could be done, how that could be done.

21 Q. Did he render his opinions in writing?

22 A. He did.

23 Q. Do you know what other options he provided?

24 A. I don't recall specifically. I'm sorry.

25 Q. Is he still being retained by the company, or has

1 his services -- are they no longer being used?

2 A. He is no longer retained by the company.

3 Q. And is that because he just finished his task --

4 A. Yes.

5 Q. -- as opposed to being terminated, sort of thing?

6 A. Yes.

7 Q. McBride Engineering, did they render any written
8 reports to you?

9 A. Yes.

10 Q. And what topic or topics did they entail?

11 A. Their focus was on a storage -- water storage
12 facility, pond, or enclosed facility for the storage of
13 water.

14 Q. Do you know what they concluded?

15 A. They present six options.

16 Q. Do you know what the six were?

17 A. There were six different sizes of storage tanks
18 with some different models of storage tanks, different
19 sizes, different volumes of water, different depths,
20 covered and uncovered.

21 Q. Do you know if that report from McBride
22 Engineering and those options have been shared with my
23 client?

24 A. To the best of my knowledge, they have.

25 MR. WILEY: I was going to say -- offer a

1 clarification, because we were talking to Greg about it.

2 I think it was actually issued to Black Mountain
3 Sewer Company and then probably given to the resort
4 through the sewer company, so we are all clear, because
5 McBride is Black Mountain's engineer.

6 THE WITNESS: Thank you.

7 MR. BOURQUE: Thank you.

8 BY MR. BOURQUE:

9 Q. Same question with Mr. Lacy's report or reports.
10 Were those shared with Black Mountain?

11 A. I do not know.

12 Q. Who was the contact person in dealing with
13 Mr. Lacy at your company?

14 A. Legal counsel retained them, and the contact
15 person at our company would have been either Tom McCahan
16 or Dean Hunter.

17 Q. And when you say "legal counsel," do you mean
18 Mr. Bellamy's firm or different legal counsel?

19 A. Prior to Mr. Bellamy's firm.

20 Q. What firm was that?

21 A. Jennings -- no.

22 MR. BELLAMY: Homes Robert.

23 THE WITNESS: Homes Robert Owen.

24 BY MR. BOURQUE:

25 Q. Homes --

1 A. Homes Roberts & Owen.

2 Q. Are they in Arizona?

3 A. Not any longer.

4 Q. Then the third set of consultants or experts that
5 you testified to was Juergen Nick.

6 And did he present some written material to you?

7 A. No.

8 Q. What did he convey to you verbally, I assume?

9 A. Yes, verbally. He looked at the option of
10 replacing the existing plant with a clean plant, a more
11 limited scope, fully enclosed.

12 Q. In its current location or a different location?

13 A. Different location.

14 Q. Do you know why that wasn't set forth in writing?
15 Do you?

16 A. His -- his consultancy, if you will, was an
17 initial meeting with an initial thought and opinion. We
18 had a preliminary discussion with Black Mountain. Black
19 Mountain looked at the option, did some feasibility work
20 on it, and, to the best of my knowledge, determined it
21 wasn't feasible because we never pursued any further. So
22 we never pursued with Mr. Nick any further.

23 Q. With respect to any of the options that were
24 provided by Mr. Lacy or McBride Engineering or Juergen
25 Nick, were any of those options acceptable to your

1 company?

2 A. Unfortunately, no.

3 Q. Do you know why?

4 A. There are a variety of reasons, and truly,
5 Dean Hunter is in a better position to speak to the
6 technical aspects of that than I am.

7 Q. In that regard I noticed in your testimony,
8 Question 21 -- Answer 21, you did indicate: "First let me
9 say that I'm not an expert in wastewater treatment
10 plants," and then you indicate, "We understood from
11 inquiries, however, that it should be technically feasible
12 to install a small new efficient wastewater plant that
13 would be fully enclosed and that could partially treat
14 wastewater before sending a more concentrated waste system
15 to Scottsdale for further treatment."

16 And who did you understand that from?

17 A. Juergen Nick.

18 Q. And who made those inquiries that you testified
19 to in Answer 21?

20 A. Tom McCahan and myself.

21 MR. BOURQUE: Let's mark Exhibit 3, the Effluent
22 Delivery Agreement.

23 (Exhibit 3 was marked for identification.)

24 BY MR. BOURQUE:

25 Q. Do you see Exhibit 3 in front of you?

1 A. I do.

2 Q. And I believe it was one of the documents that
3 you looked at prior to today's deposition?

4 A. Yes.

5 Q. Did you look at any particular provisions or just
6 read the whole thing?

7 A. I -- I quickly did an overview of the document.

8 Q. I would like you to look at -- please look at
9 paragraph 1 on page 8, and paragraph 12 deals with
10 termination of agreement.

11 Do you see that?

12 A. Yes.

13 Q. And it's got "(a), Rate Increases."

14 Do you see that?

15 A. Yes.

16 Q. If Black Mountain were forced to build a new
17 plant and it -- are you aware that it might seek a rate
18 increase as a result of having to try to recapture what it
19 spent?

20 A. Yes.

21 Q. And do you realize that it might increase the
22 rates for the resort to the effluent that it gets?

23 A. Yes.

24 Q. Has the resort done any calculations in that
25 regard as to how Black Mountain's being required to build

1 a new plant, or Black Mountain electing to build a new
2 plant, how that would impact rates for your company?

3 A. No.

4 Q. Let's take a look, if you would, please, at
5 page 6 of Exhibit 3. And the last sentence of paragraph 6
6 indicates, "For the purposes of this provision, the term
7 'uneconomic' means that the costs and expenses relating to
8 the treatment and delivery of effluent, including
9 applicable overheads, would exceed the market price for
10 effluent used for golf course irrigation and similar
11 purposes in Maricopa County."

12 Do you see that?

13 A. Here.

14 Q. I'm sorry. Did you say yes?

15 A. I was looking in the wrong place. So I found it
16 now. Yes, I see that.

17 Q. Okay. Do you know what the market price for
18 effluent used for golf course irrigation and similar
19 purposes in Maricopa County is?

20 MR. BELLAMY: Objection to form.

21 BY MR. BOURQUE:

22 Q. If you can answer the question.

23 A. I do not know the market price in Maricopa
24 County.

25 Q. Do you know the market price anywhere?

1 A. I can tell you what we pay -- well, I can look
2 up -- I can't tell you off the top of my head what we pay
3 for RWDS water. I can tell you what we pay for Black
4 Mountain Sewer effluent. Beyond that I couldn't tell you.

5 MR. BOURQUE: I will mark as Exhibit 4 The
6 Boulders Resort Motion to Intervene.

7 (Exhibit 4 was marked for identification.)

8 BY MR. BOURQUE:

9 Q. Have you looked at Exhibit 4 before today?

10 A. Yes.

11 Q. It was filed by, looks like, your attorneys; is
12 that correct?

13 A. That's correct.

14 Q. Did you approve it before it went out?

15 MR. BELLAMY: Objection to form.

16 BY MR. BOURQUE:

17 Q. Let me rephrase.

18 Did you review it? Did you read it before it was
19 filed?

20 A. I may have. I can't tell for sure.

21 Q. Other than you, who might have reviewed this
22 document, Exhibit 4, before it was filed?

23 A. Piero Bussani.

24 Q. And Ms. Sproegis as well, or no?

25 A. She may have, may not have. I don't know.

1 Q. But you think Mr. Bussani certainly may have?

2 A. Yes.

3 Q. Does -- to your knowledge, does he review all
4 documents before they get filed with the court on your
5 company's behalf?

6 A. To my knowledge.

7 Q. Is he the primary decision-maker within the
8 company on this ACC matter?

9 MR. BELLAMY: Objection to form.

10 THE WITNESS: He is legal counsel for the
11 company, for the ownership.

12 BY MR. BOURQUE:

13 Q. And is he in-house legal counsel, or does he work
14 for a law firm that represents the company?

15 A. In-house.

16 Q. On page 5 of Exhibit 4 -- thank you -- if you
17 would please take a look at line 13. And line 13 starts
18 with, "In this manner." And let me know when you are
19 there --

20 A. I am there.

21 Q. -- because I know we read these -- lawyers read
22 these all the time, and you don't, so --

23 At line 13 at page 5 of Exhibit 4 it indicates,
24 "In this manner the contract makes it clear that Black
25 Mountain Sewer's obligation to supply the required amount

1 of water to The Boulders through 2021 would continue even
2 if the existing plant was closed, unless a new plant could
3 not supply the replacement water for less than the market
4 price."

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you agree with that?

8 MR. BELLAMY: Objection to form.

9 THE WITNESS: I guess I don't know -- are you
10 asking me to agree with that statement as written, or are
11 you asking me to agree with it conceptually?

12 BY MR. BOURQUE:

13 Q. I'm asking you whether you agree with the
14 statement.

15 MR. BELLAMY: Objection to form.

16 THE WITNESS: I think anything different would
17 not be feasible to The Boulders financially.

18 BY MR. BOURQUE:

19 Q. Okay. And my question wasn't if anything would
20 be -- anything different would be feasible to The Boulders
21 financially. It was, do you agree or disagree with the --
22 with that statement at lines 13 through 16 at page 5 of
23 Exhibit 4?

24 MR. BELLAMY: Objection to form.

25 THE WITNESS: Yes.

1 BY MR. BOURQUE:

2 Q. Do you know whether a new plant could supply the
3 replacement water for less than the market price?

4 A. I do not know.

5 Q. Do you know if anybody within your company knows
6 that?

7 A. I do not know.

8 Q. On page 6 of Exhibit 4, line 2 indicates, "The
9 Boulders has undoubtedly missed opportunities to have
10 secured the right to other water."

11 Do you know what opportunities those were?

12 MR. BELLAMY: Objection to form.

13 BY MR. BOURQUE:

14 Q. Do you know?

15 A. I do not know if there were other opportunities.

16 Q. Have you ever discussed with either Mr. McCahan
17 or anybody else at your company what opportunities may
18 have been missed?

19 A. I have not.

20 Q. And then it indicates, "Now, in 2011 with The
21 Boulders' options limited and far more expensive."

22 Do you know what the Boulders' options are
23 limited to?

24 A. Yes.

25 Q. What are they limited to?

1 A. Essentially what we have explored, which fall
2 under the categories of conservation, replacement supply.

3 Q. And has your company decided which option is
4 best?

5 A. I don't -- we have determined that there is no
6 one best option available to us at the moment.

7 Q. Are there some kind of combination of options?
8 I'm not clear on that last answer.

9 A. There are a combination of options that we have
10 explored that are out and available to us.

11 Q. And has The Boulders decided -- excuse me.
12 Has your company decided which of those it
13 prefers?

14 A. Not definitively.

15 Q. Is there any -- has there been a list made? Is
16 there any pecking order that, it's not definitive but --
17 it's something less than definitive but on the drawing
18 board right now we think this would be the best option?

19 A. In my opinion or the company's opinion?

20 Q. Let's do one at a time, yeah.

21 A. Okay.

22 Q. In your opinion.

23 A. Not being the technical person, the option that
24 makes the most sense to me is the replacement plant.

25 Q. And why does that make the most sense to you?

1 A. Because it's a long-term solution for all
2 parties.

3 Q. And you are aware that that may increase the rate
4 for effluent that your company will pay in the future?

5 A. Yes.

6 Q. And are you willing to live with that?

7 A. Are you asking me personally?

8 Q. Yes.

9 A. Yes.

10 Q. And then the company, do you think the company's
11 sentiment differs from believing that the replacement
12 plant is the best long-term solution?

13 MR. BELLAMY: Objection to form.

14 THE WITNESS: Truthfully, we haven't had a
15 conversation where we said, of all of these options, which
16 one is the best long-term solution? So I don't have an
17 answer for you.

18 BY MR. BOURQUE:

19 Q. And where, in your opinion, or the company's
20 opinion, would the replacement plant go physically?

21 A. The parcel of land that we had originally
22 identified as having the potential has not yet been
23 discussed with ownership but is on Boulders' property.

24 Q. And when you say The Boulders' property, do you
25 mean your company's property?

1 A. Yes.

2 Q. When you are using the term, "The Boulders," you
3 are meaning your company?

4 A. Yes.

5 Q. And you said, I think -- and I apologize that you
6 said something to the effect, it's not yet been discussed
7 with ownership?

8 A. Yes.

9 Q. Do you know why?

10 A. Yes.

11 Q. Why?

12 A. Because the option was not pursued after Black
13 Mountain did their initial feasibility study.

14 Q. And why was the option not pursued with ownership
15 after Black Mountain did its feasibility study?

16 A. Because it was no longer feasible. The option
17 was off the table.

18 Q. Do you agree or disagree -- well, who made the
19 decision that it was no longer feasible?

20 A. My understanding is, that came from Black
21 Mountain.

22 Q. Okay. Does your company agree or disagree with
23 that conclusion?

24 A. We are not the water experts.

25 Q. Okay. So you haven't -- no opinion one way or

1 the other?

2 A. I have no opinion one way or the other.

3 Q. Have any of the consultants or experts you have
4 hired weighed in on that?

5 A. Only initially, in the initial identification of
6 the potential for a replacement plant, not following
7 any -- we haven't asked for any other feasibility studies,
8 any other opinions, no.

9 Q. Do you believe that -- and, by the way, I don't
10 know if you got it -- probably didn't take everybody's
11 name, but that is Greg Sorenson. You probably know him
12 better than me. Greg who?

13 Do you think that anything that Black Mountain,
14 my client, did in connection with the determination that
15 the replacement plant was not feasible was done improperly
16 or in bad faith?

17 MR. BELLAMY: Objection to form.

18 THE WITNESS: I would have no way of knowing
19 that.

20 BY MR. BOURQUE:

21 Q. So you don't have any facts that they acted in
22 bad faith in coming to that conclusion?

23 A. I do not.

24 Q. That goes with -- actually, strike that.

25 Let's go back to Exhibit 4. On the page 6, that

1 sentence I'm -- beginning on line 3, "Now in 2011, with
2 Boulders' options limited and far more expensive," I want
3 to focus on those words, "and far more expensive."

4 Far more expensive than what?

5 A. Than what we are currently paying to Black
6 Mountain.

7 Q. And I have had the advantage of reviewing this
8 document just before we started.

9 If you look at the preceding sentence, it ends
10 with, "The Boulders has undoubtedly missed opportunities
11 to secure the right to other water. Now in 2011, with The
12 Boulders' options limited and far more expensive." I read
13 it to mean far more expensive than the missed
14 opportunities.

15 Do you read it to be far more expensive than what
16 you are currently paying, or how do you read that "far
17 more expensive"?

18 A. Taken in context of missed opportunities to have
19 secured the right to other water, it appears that that
20 sentence means that the water is -- that far more
21 expensive means than the other opportunities.

22 Q. And how are your options far more expensive than
23 the alleged missed opportunities?

24 MR. BELLAMY: Objection to form.

25 THE WITNESS: Considering that those missed

1 opportunities may have preceded me, I can't tell you.

2 BY MR. BOURQUE:

3 Q. And when you say "may have preceded me," I think
4 you testified earlier that you began working at this site
5 in 2006?

6 A. Yes.

7 Q. As far as your tenure from 2006 to the current, I
8 take it you don't have any personal knowledge that
9 Boulders' current options are far more expensive than
10 so-called "missed opportunities"?

11 A. Correct.

12 Q. Then the next paragraph in Exhibit 4, on page 6,
13 starts with, "Moreover, in operating its plant in a manner
14 that has so upset the community, including BHOA's members,
15 Black Mountain Sewer has failed to live up to the promises
16 of its covenants to The Boulders to 'make such repairs,
17 upgrades, and improvements as may be necessary.'"

18 Do you see that?

19 A. I do.

20 Q. What repairs, upgrades, and improvements as may
21 be necessary do you allege that The Boulders -- excuse
22 me -- do you allege that Black Mountain has not made?

23 MR. BELLAMY: Objection to form.

24 BY MR. BOURQUE:

25 Q. Let's take that one at a time then.

1 What repairs do you believe that Black Mountain
2 has failed to make in connection with its wastewater
3 treatment plant?

4 A. I wouldn't -- I'm not in a position to answer
5 technically what those repairs might be. I can only
6 reiterate the frustration of the BHOA members of the
7 ongoing odors.

8 Q. So you have knowledge of the frustration of the
9 homeowners, vis-à-vis, odors; correct?

10 A. Correct.

11 Q. But you don't have any personal knowledge of any
12 failure to conduct repairs or upgrades or improvements as
13 may be necessary by my client; correct?

14 A. Not to the technical aspect of those, I can't
15 speak.

16 Q. To any other aspect?

17 Let me rephrase it.

18 A. Okay.

19 Q. It's kind of a Zen thing, I think.

20 Are you saying, I know that there's odor and I
21 know there has been complaints about odor. That is what I
22 know. I don't know whether or not Black Mountain has made
23 repairs, upgrades, and improvements as may be necessary?

24 A. That's exactly what I'm saying. Well put.

25 Q. Okay. Are you aware that the Homeowners'

1 Association entered into that Wastewater Treatment Plant
2 Closure Agreement and indicated that improvements that my
3 client has made have been successful in addressing odors
4 from the company's collection system; however -- I'm
5 probably going to mispronounce it. Is it fugitive or
6 fugitive -- fugitive odors continue to be a problem at the
7 plant, as do intermittent noises and traffic from an
8 assortment of trucks and related vehicles servicing the
9 plant, due primarily to its location within BHOA and in
10 the immediate proximity of residential properties.

11 Do you agree with that statement?

12 A. I agree that odors are ongoing. In light of, and
13 not failing to acknowledge that the Black Mountain Sewer
14 has made improvements, there are still, we call them,
15 fugitive odors.

16 I am not aware of the noise complaints. I
17 apologize. I haven't heard about noise complaints.

18 Q. And then in the Wastewater Treatment Plant
19 Closure Agreement it states that, "This is true despite
20 the parties' agreement that the plant is being operated by
21 BMSC in compliance with all applicable law and regulation
22 and that such utility property is a used and necessary
23 asset of BMSC."

24 Do you agree with that?

25 A. Do I agree with?

1 Q. Do you have any facts that the plant is being
2 operated out of compliance with all applicable law and
3 regulation?

4 A. Absolutely not.

5 Q. In other words, you don't have facts that it's
6 not in compliance?

7 A. That's correct.

8 Q. Sitting here today, have you been told by any of
9 your consultants or experts or anybody within your
10 company, except for legal counsel, have you been told by
11 any of those folks that Black Mountain is not doing enough
12 in the way it operates its plant in terms of improvements,
13 in repairs?

14 A. We have not been.

15 Q. And have you --

16 A. I have not been.

17 Q. And have you ever said that to somebody, whether
18 it be, you know, your colleagues, whether it be
19 Mr. Bussani, or whether it be a member of the public?
20 Have you told anybody that, hey, Black Mountain is not
21 making necessary improvements, repairs, and the like?

22 MR. BELLAMY: Objection to the form, because you
23 mentioned Mr. Bussani, who is legal counsel.

24 MR. BOURQUE: That's right. That's right. Let
25 me strike that, and I apologize.

1 BY MR. BOURQUE:

2 Q I don't want to get into any communication with
3 you and your legal counsel.

4 Have you ever told anybody, or have you ever
5 e-mailed anybody, other than counsel, that Black Mountain
6 is not making appropriate improvements and repairs and the
7 like at the wastewater treatment plant?

8 A I have not.

9 Q And that's because you have no facts to the
10 contrary, I take it?

11 A That's correct.

12 MR. BOURQUE: I need to take a bathroom break, if
13 we can.

14 THE WITNESS: Perfect.

15 (A recess was taken from 10:37 a.m. until
16 10:46 a.m.)

17 BY MR. BOURQUE:

18 Q Back on the record.

19 Looking at the Effluent Delivery Agreement, it
20 indicates, I believe, an expiration in 2021, but I want to
21 look at the exact language here.

22 Yeah, it's paragraph 11 on page 8. "Term: This
23 agreement shall remain in effect for a period of 20 years
24 from the date on page 1 of this agreement" --

25 And the date on page 1 of the agreement is 2001;

1 correct?

2 A. Correct.

3 Q. -- "unless earlier terminated as provided under
4 paragraph 12 below."

5 Has your company made any plans regarding what it
6 would do or what it will do in 2021?

7 A. Not at this time.

8 Q. Have there been any discussions as to what might
9 be done?

10 A. Only as part of exploration of alternatives
11 through this process.

12 Q. And those you have already testified to?

13 A. Yes.

14 Q. Have you attended any meetings with any of my
15 client's representatives, such as Mr. Sorensen or
16 Jay Shapiro, or anybody else?

17 A. Yes.

18 Q. Have you met Greg Sorenson before today?

19 A. Yes.

20 Q. And have you met Jay Shapiro?

21 A. Yes.

22 Q. Who else have you met from the company, my
23 company?

24 THE WITNESS: Greg, help me. Tom Nichols?

25 MR. SORENSON: Yes.

1 THE WITNESS: And there may have been one other
2 person at one of the meetings. Tom for sure, and you, and
3 Jay. Maybe not. Maybe it was just Tom.

4 BY MR. BOURQUE:

5 Q. And how many meetings have you had with those
6 folks?

7 A. It's either two or three.

8 Q. Who was present at each respective meeting, if
9 you remember?

10 A. The first meeting was -- to go through the entire
11 list it was: Greg, Tom, Jay from Black Mountain, Les, and
12 Scott from -- I believe it was Scott -- from Boulders
13 Homeowners' Association, maybe just Les. The mayor of
14 Carefree was there. I believe the Town manager was there.
15 Tom McCahan, Dean Hunter, myself, Danelle Knelling, who
16 was our legal counsel with Homes Robert & Owen, and
17 Frank Kynkor, who is our chief ergonomist representative
18 of the owners -- chief ergonomist for the owners.

19 Q. What was Mr. Kynkor doing in terms of, why did
20 you want him there?

21 A. He was there mostly to listen to what was going
22 on and to evaluate what that meant in terms of the future
23 water needs of The Boulders.

24 Q. Does Mr. Kynkor work at The Boulders in Carefree?

25 A. He does not.

1 Q. Where does he work?

2 A. I believe he works in Boca Raton.

3 Q. Did you take notes at that first meeting?

4 A. I did.

5 Q. Do you still have those?

6 A. I do.

7 Q. To the -- when was that first meeting? I'm
8 sorry.

9 A. September 2010.

10 Q. And what happened at the meeting?

11 A. It was -- the group of us got around the table to
12 meet and to start -- begin discussions as to what
13 replacement water would look like, what alternatives
14 should be pursued. There were a series of assignments,
15 and we were each looking into different areas.

16 Q. When you say "a series of assignments," what do
17 you mean?

18 A. When we walked away from the table, we had a
19 series of options that we were going to research, Black
20 Mountain was going to research. I don't believe we
21 assigned anything to the Town of Carefree or to the mayor.
22 They were there and very supportive. I think the
23 Homeowners' Association was going to look into a couple
24 things, and then we were going to regroup.

25 Q. Okay. Was it a collegial meeting as opposed to

1 an acrimonious meeting?

2 A. It was collegial.

3 Q. Were there any disputes at the meeting that you
4 are aware of?

5 A. Not that I recall.

6 Q. Do you recall what Greg Sorenson or Tom Nichols
7 or Jay Shapiro, what their positions were at the meeting?

8 A. Yes.

9 Q. What were they?

10 A. The -- they were very clear in explaining to us
11 that as a utility company they had certain perimeters **SEE ATTACHED / XEB**
12 under which they were able to work, that they were able to
13 get through the Corporation Commission a rate increase to
14 cover the cost of closing the plant, however, they would
15 not be able to participate -- they were -- I don't know
16 how to say it -- they -- the way a utility company is
17 structured -- this is my understanding -- they would not
18 be able to participate in a settlement because the rate
19 structure does not allow for a legal settlement. So they
20 would not be able to participate in a financial legal
21 settlement for this case, for the breaking of the
22 contract, if it were coming to that.

23 Q. Anything else you recall Greg or Tom Nichols or
24 Jay Shapiro saying?

25 A. They participated technically in some of the

1 discussions regarding replacement water.

2 Q. And was the point of that first meeting to try to
3 resolve the parties' differences or come to an agreement
4 on something, or what was -- what was the purpose of the
5 meeting?

6 A. The purpose of the meeting was to introduce all
7 the players to one another, so that we could begin to work
8 towards a resolution of finding replacement water sources.

9 Q. Anything else you recall about that first
10 meeting?

11 A. Nothing.

12 Q. And there was another meeting after that?

13 A. Yes.

14 Q. When was that second meeting?

15 A. Well, as I said, I believe there were two or
16 three meetings. The next meeting that I recall with the
17 group of us was in these offices last fall.

18 Q. So that would have been the fall of 2011?

19 A. Correct.

20 Q. And "these offices" being Fennemore Craig?

21 A. Yes.

22 Q. Who was present at that meeting?

23 A. Greg, Jay, Scott -- I don't remember if Les was
24 there or not -- myself and Michele Van Quathem.

25 Q. What happened at that second meeting at Fennemore

1 Craig's offices in the fall of 2011?

2 A. We discussed the status of what we had all been
3 working on, what options were. It was largely in response
4 to, I believe, the motion to intervene or the letter -- it
5 could have been the letter, to get us back to the table
6 talking about what options were open to us.

7 At that meeting we introduced the possibility,
8 which was very new, we had just learned of it the week
9 before this meeting, of a replacement plant. And so we
10 talked a little bit theoretically about that.

11 We -- again, I believe it was reiterated that
12 from a legal perspective, Black Mountain is restricted
13 from entering into a legal settlement. There was no money
14 for that. So they wouldn't be participating in a legal
15 settlement.

16 When we left the meeting, Greg was going to have
17 his team get ahold of us and work through the possibility
18 of a replacement plant. And I think that was about it.

19 Q. And was that meeting also collegial as opposed to
20 acrimonious?

21 A. Not quite as collegial as the first meeting but
22 not acrimonious.

23 Q. And what was less collegial about the second
24 meeting versus the first?

25 A. We were all very tense.

1 Q Do you recall anything else about that second
2 meeting?

3 A Not off the top of my head, no.

4 MR. WILEY: Off the record.

5 (Discussion off the record.)

6 (A recess was taken from 10:57 a.m. until
7 11:02 a.m.)

8 BY MR. BOURQUE:

9 Q Back on the record.

10 Anything else about that second meeting, which
11 occurred in the fall of 2011, that you remember?

12 A Not that I recall, no.

13 Q And were there any subsequent meetings with any
14 members of my client, Black Mountain?

15 A No.

16 Q Other than meetings at which people were
17 physically present, have you been on any telephone calls
18 with any representatives of my client?

19 A Following that meeting?

20 Q Or at any time.

21 A I think Greg and I have spoken a couple times
22 over the last couple of years.

23 Q Okay. Then prior to that second meeting, had you
24 spoken with Greg Sorenson on the phone?

25 A We spoke very early on, I believe after the first

1 meeting. I don't know about that meeting in the fall, if
2 we had spoken recently.

3 Q In the telephone calls that you have had with
4 Greg Sorenson, do you know what you've said and what he's
5 said?

6 A I couldn't tell you. It would have been whatever
7 topic was at hand.

8 Q And after that second meeting in the fall of
9 2011, what happened next relative to communications
10 between your company and my client?

11 A As I had indicated earlier, one of the topics
12 that was introduced was the option or the possibility of a
13 smaller, more limited-scope replacement plant. And so
14 Greg was going to look into it. I believe I called to see
15 if we could make arrangements to show the property.

16 And we must have made arrangements because
17 someone came out and looked at the property. And then
18 several weeks later I got a -- had a voicemail from
19 Tom Nichols saying, we haven't forgotten about it. We're
20 working -- finishing up the feasibility study, should know
21 something soon.

22 So that correspondence followed the second --
23 that all followed the second meeting.

24 Q And then after the voicemail from Tom Nichols,
25 was there further follow-up?

1 A. With me personally, no.

2 Q. Do you know if with anyone else?

3 A. There had to have been because I learned that the
4 wastewater -- a replacement plant was not feasible, so
5 I -- but I don't recall how I learned that, whether it was
6 from legal counsel or in the documentation we were
7 provided, or in what manner.

8 Q. Do you recall any other communications, whether
9 it's telephone calls or in-person meetings, that you have
10 had with Greg Sorenson, Jay Shapiro, or Tom Nichols, or
11 any other members of my client?

12 A. We all went down to the City of Scottsdale fairly
13 early on to talk with them about what options were
14 available. It was at that point in time that we started
15 exploring the -- because as part of that discussion one of
16 the thoughts and ideas that came up, and it may have been
17 presented as a possibility -- I don't recall who presented
18 it -- was the groundwater option.

19 So we met down at the City of Scottsdale. We met
20 again -- I believe we were all at the Scottsdale -- at a
21 meeting again with the City in July of last year.

22 So there were a couple of meetings with the City.
23 There were a couple meetings independently.

24 Q. And the couple meetings independent, you just
25 referred to those, September 2010, the fall of 2011.

1 Is that what you are alluding to?

2 A. Yes.

3 Q. And then a couple meetings with the City, what
4 happened at those meetings?

5 A. We talked about options. We talked about
6 options, if the City could provide us with excess water
7 through the RWDS system. That was one option. We talked
8 about the possibility of potable water. We talked about
9 groundwater as a possibility, what that would take, how we
10 would have to go into the -- I always forget what that is
11 called -- recapture, whatever it's called, mode. We
12 talked about IWDS, we talked -- we talked about what
13 options were out there and available to us and what
14 restrictions there may be within our RWDS agreement with
15 the City of Scottsdale.

16 We talked about pipeline capacity, because that
17 was a limiting factor on RWDS, being able to get
18 additional water up to us. We talked about the aging of
19 the pumps as they come up the hill and that that is a
20 critical issue in being able to move water -- increase
21 supplies of water up to us. We talked about the potential
22 of a new wastewater treatment plant that the City has
23 under construction. We talked about a variety of options.
24 That was the first meeting.

25 The second meeting we talked, again, about many

1 of those same options, but really pursued the potable
2 water option more thoroughly. And the potable water
3 option we pressed and learned that that is available only
4 on an emergency basis, very limited with a pretty
5 substantial development fee.

6 Q. Do you remember what, in those couple meetings
7 with the City, what Greg Sorenson said or Jay Shapiro or
8 Tom Nichols or whatever other representatives of my client
9 said their positions were, or were they more in a
10 listening mode?

11 A. I think we were all in a listening mode. I think
12 there were some participations and offerings from everyone
13 at the table.

14 Q. And what was the, kind of, take-away end game of
15 those meetings at the City?

16 A. Again, there were new ideas put on the table, and
17 those ideas were pursued following the meeting and
18 explored.

19 Q. By whom?

20 A. Well, the groundwater option was explored by us.
21 And I believe there was some assistance because Greg had a
22 contact with someone at the Department of Water Resources,
23 and that person was an important part of telling us how to
24 work through the process. That is where the consultant,
25 Fluid Solutions, Tom Lacy, came into play. I believe

1 we -- it was at some point after that that we brought him
2 into play.

3 Q. Okay. And then as a result of all of these
4 options, as a result of the in-person meetings at -- in
5 September of 2010, and at Fennemore Craig in the fall of
6 2011, the couple meetings with the City, where are we
7 today in terms of --

8 A. We have a lot of options on the table, and none
9 of them are both affordable, feasible -- or I should say
10 meet the category of affordable and feasible and doable.

11 Q. You made a comment in your testimony that, "The
12 resort employs approximately 550 people, and we estimate
13 that it annually generates revenues of \$40 million for the
14 surrounding communities."

15 How did you determine that number?

16 A. The --

17 Q. The 40 million.

18 A. The 40 million, as I was rereading that last
19 night, I thought, okay, this is going to be
20 misinterpreted; I just know it.

21 The \$40 million would be the annual revenues of
22 the resort.

23 Q. Okay. And annual revenues of the resort, does
24 that include all revenues of whatever kind that the resort
25 brings in?

1 A. That's correct.

2 Q. Okay. How much does it bring in with folks
3 golfing?

4 A. Golf-specific revenue is in the neighborhood
5 of -- I would say we average five and a half million a
6 year exclusive of membership dues.

7 Q. What are membership dues?

8 A. The Boulders is a resort -- has a resort course
9 and has a membership -- a full club membership. The
10 members of The Boulders Club pay dues, and those dues are
11 not included in that five and a half million dollars of
12 golf revenue.

13 Q. I believe it was in your motion to intervene --
14 well, maybe it was in your testimony, that there was an
15 indication that -- yeah, that the golf course was designed
16 and operated to compete with courses at other luxury
17 properties, page 4, line 16.

18 Is that an accurate statement?

19 A. Yes.

20 Q. Do you know what other luxury properties that you
21 are competing with?

22 A. We compete with The Four Seasons. We compete
23 with the Phoenician, the Fairmont, Wigwam, Royal Palms,
24 Hyatt at Gainey Ranch. Probably missing somebody. We
25 have some smaller-set competitors that are not golf

1 resorts, but those are the primaries.

2 Q. Do you know how many members of The Boulders
3 Resort are also members of the Boulders Homeowners'
4 Association? Has anybody ever figured that out?

5 A. That would be easy to do. I have not figured it
6 out.

7 Q. There is overlap, I take it?

8 A. There is overlap.

9 Q. What do you know about the history of the golf
10 course and the resort in terms of, have you been given any
11 background as to what went in first, the golf course or
12 the wastewater treatment plant, et cetera, or do you not
13 know those sorts of things?

14 A. I have some -- I have some details, and I may be
15 missing some others. Dean actually was there at the very
16 beginning. Yes. Yeah.

17 Q. And the beginning was?

18 A. The golf course.

19 Q. And what do you understand the history of it is?

20 A. The golf course opened in the early '70s, which
21 would mean the wastewater treatment plant predated it by
22 just a few years. One of the courses was developed
23 earlier than the other course. Residential areas built up
24 around the courses.

25 Q. Do you know which came first, the residential --

1 the residences or the golf course?

2 A. I don't know. I don't know if there were
3 residences there prior to the course.

4 Q. You indicate in your testimony, "If the resort is
5 not able to maintain the golf course in world-class
6 condition, it will have an impact on the resort's ability
7 to continue attracting visitors and golf club members."

8 Do you know what world-class condition means? Is
9 that an industry standard, or is that a term of art?

10 A. That is an industry standard.

11 Q. And what -- is there a particular rating of golf
12 courses within that industry standard, to your knowledge?

13 A. Not to my knowledge. Tom or Dean could more --

14 Q. They know more about the industry standard than
15 you?

16 A. Yep.

17 Q. Let's take a look at the Effluent Delivery
18 Agreement again, if you would be so kind, and go back to
19 page 5. And if would you do me a favor and just read to
20 yourself paragraph 6 (a) through (d).

21 Do you see that on page 5 of the Effluent
22 Delivery Agreement? It says, "BCSC's Covenants." Do you
23 see that?

24 A. Uh-huh.

25 Q. And then just read (a) through (d) to yourself,

1 and when you are done, please let me know.

2 A. Okay. I'm finished.

3 Q. Okay. Thank you.

4 Do you have any facts that BCSC has not complied
5 with 6 (a) through (d).

6 A. I do not.

7 Q. Okay. Let's take a look at the next paragraph
8 after that.

9 It says, "The obligations of BCSC under this
10 paragraph shall terminate if physical conditions at The
11 Boulders East Plant or any laws, regulations, orders, or
12 other regulatory requirements prevent or materially limit
13 the operation of The Boulders East Plant or render the
14 operation of such plant uneconomic"; do you see that?

15 A. I do.

16 Q. And would you agree with me that when it says
17 "under this Paragraph," with a capital P, that means
18 paragraph 6?

19 A. I would take that to be so, yes.

20 Q. Okay. What does the word "terminate" mean to
21 you?

22 A. It means something comes to an end. In this
23 context, the agreement.

24 Q. I take it you didn't have any involvement in the
25 drafting of this document?

1 A. That's correct.

2 Q. Okay. Has anybody told you who drafted it?

3 A. You know, I have never asked. I have never
4 asked.

5 Q. Has anybody, other than your legal counsel,
6 commented to you about how well or how poorly it was
7 drafted?

8 A. No.

9 Q. Do you have any opinion in that regard?

10 A. I'm not a legal person.

11 Q. Yeah. No, that's okay.

12 A. So no, I certainly wouldn't render an opinion on
13 that.

14 Q. Do you see the language in paragraph 6 that
15 says -- that sentence I read to you, "any laws,
16 regulations, orders, or other regulatory requirements"?

17 A. Uh-huh.

18 Q. Is that a "yes"?

19 A. Yes. I'm sorry.

20 Q. Yeah.

21 A. I apologize.

22 Q. I should have at the outset said, please use yes
23 if you can because I do the same thing.

24 What does the word "laws" mean to you as used in
25 that sentence?

1 A. If the law changed regarding effluent or
2 regarding the production of the water somehow.

3 Q. What does the word "regulations" mean?

4 A. Those are the rules that -- I would interrupt
5 that to be the rules that BCSC has to abide by.

6 Q. And what does the word "orders" mean to you, as
7 used, of course, in this sentence?

8 A. Okay. Under this context, I would say, if
9 someone ordered BCSC to act in a certain fashion, some
10 legal entity that had authority.

11 Q. Such as the Arizona Corporation Commission or the
12 Superior Court?

13 A. Such as those, yes.

14 Q. And then it says, "or other regulatory
15 requirements."

16 What does that mean to you within this sentence?

17 A. Again, regulatory requirements means, to me, the
18 rules that BCSC is required to abide by in the operation
19 of the plant.

20 Q. And then it says, this sentence, "prevent or
21 materially limit the operation of The Boulders East
22 Plant."

23 What does that language mean to you, as used in
24 this sentence?

25 A. If any of those preceding descriptors -- laws,

1 regulations, orders, or other regulatory requirements --
2 if they either limited Black Mountain's ability to operate
3 the plant or prevent the plant from operating.

4 Q. And then the last portion of that sentence says,
5 "or render the operation of such plant uneconomic."

6 Do you read that to mean that, if the physical
7 condition at The Boulders plant or any laws, regulations,
8 orders, or other regulatory requirements render the
9 operation of such plant uneconomic, that the obligations
10 under paragraph 6 would terminate?

11 MR. BELLAMY: Objection to form.

12 BY MR. BOURQUE:

13 Q. Is that the way you read it?

14 A. Not being a legal person --

15 Q. Sure. And I will tell you why I asked the
16 question that way, because it appears to me that you have
17 the obligations under paragraph 6 terminating if you have
18 physical conditions or if you have laws, regulations,
19 orders, or other regulatory requirements. Then it says,
20 "prevent or materially limit the operation of The Boulders
21 East Plant or render the operation of such plant
22 uneconomic."

23 So my question is: Do you read it the way I read
24 it, which is that the obligations of BCSC under paragraph
25 6 are going to terminate if physical conditions at The

1 Boulders plant, or any laws, regulations, orders, or other
2 regulatory requirements render the operation of the such
3 plant uneconomic?

4 MR. BELLAMY: Objection to form.

5 BY MR. BOURQUE:

6 Q. Do you read it -- how do you read that language?
7 Do you read it like me or a different way?

8 A. It's -- it's -- those are the words that are on
9 the page as you have read them back, yes.

10 Q. But do you agree that if the physical condition
11 at The Boulders East Plant or any laws, regulations,
12 orders, or other regulatory requirements render the
13 operation of such plant uneconomic, BCSC's obligations
14 under paragraph 6 shall terminate?

15 MR. BELLAMY: Objection to form.

16 BY MR. BOURQUE:

17 Q. Or do you read it a different way?

18 A. In the context of that isolated sentence, I'm
19 reading it as you are reading it.

20 Q. And the word "uneconomic" appears to be defined
21 in the last sentence -- and I think we talked about it
22 earlier today -- in the last sentence of paragraph 6.

23 Do you see that?

24 A. Yes.

25 Q. Do you read "uneconomic" as used in the sentence

1 on page 5, which is the first full sentence after 6 (a)
2 through (d), to be defined in the last sentence of
3 paragraph 6, which is on page 6, which states that "For
4 purposes of this provision the term 'uneconomic'" -- and
5 uneconomic is in quotes -- "means that the cost and
6 expenses relating to the treatment and delivery of
7 effluent, including applicable overheads, would exceed the
8 market price for effluent used for golf course irrigation
9 and similar purposes in Maricopa County"?

10 A. I expect --

11 MR. BELLAMY: Objection to form.

12 THE WITNESS: Sorry.

13 I expect that that's -- that definition of
14 "uneconomic" is tied to this use of the word "uneconomic."
15 BY MR. BOURQUE:

16 Q. In other words, the use of the word "uneconomic,"
17 the first time in paragraph 6, which is in that first full
18 sentence after 6 (a) through (d), that term is a term of
19 art we just defined in the last sentence of paragraph 6;
20 correct?

21 A. That's how -- yes. Yes.

22 Q. Now, the second sentence after 6 (a) through (d)
23 starts out, "If economic considerations, technical
24 requirements, or regulatory changes require BCSC to close
25 or relocate The Boulders East Plant, BCSC will attempt in

1 good faith and to the extent technically feasible to
2 relocate The Boulders East Plant or construct a new
3 wastewater treatment plant at a site that is as close as
4 reasonably possible (taking into account the economics of
5 such relocation or construction) to the golf course."

6 Do you see that?

7 A. Yes.

8 Q. How do you read -- what do you believe "economic
9 considerations" means in that sentence?

10 MR. BELLAMY: Objection to form.

11 BY MR. BOURQUE:

12 Q. What is your understanding of what "economic
13 considerations" means within the use of that sentence? If
14 you don't know, you can just tell me, and if you don't
15 have any opinion, you can tell me that, too.

16 A. I believe -- I actually don't have an opinion on
17 that.

18 Q. Same question with the use of the words
19 "technical requirements" as used in that sentence.

20 Do you have any opinion or understanding of what
21 that means?

22 A. I can tell you what I think it means is, if the
23 current plant doesn't meet what is technically required by
24 law, then -- and it would require BCSC to close or
25 relocate the plant, they would do that in good faith.

1 Q. And then "regulatory changes," as used in that
2 sentence, any understanding or any opinion as to what that
3 means?

4 A. I would expect that that means pretty much the
5 same as the technical requirements.

6 Q. And then with respect to the remainder of that
7 sentence, what, in your opinion, is the result if it's not
8 technically feasible to relocate the plant or construct a
9 new wastewater treatment plant?

10 MR. BELLAMY: Objection to form.

11 BY MR. BOURQUE:

12 Q. Do you have an understanding one way or the other
13 of what would happen based on the language in the
14 agreement?

15 A. It's inconclusive, I think. It says that if --
16 if required to close the plant, if any of those things --
17 economic considerations, technical requirements,
18 regulatory changes -- require the plant to be closed, they
19 will attempt in good faith to relocate it.

20 Q. I understand that, but to the extent --

21 A. There is no other conclusion within the context
22 of that sentence.

23 Q. But within the context of the entire paragraph 6,
24 what do you believe happens if there couldn't be a -- if
25 it's not technically feasible to relocate the plant or

1 construct a new wastewater treat plant, what happens?

2 MR. BELLAMY: Objection to form.

3 THE WITNESS: I don't have an opinion on that.

4 BY MR. BOURQUE:

5 Q. The follow-up sentences in this paragraph 6 that
6 talks about, "In the event that The Boulders East Plant is
7 relocated or a new facility constructed, user will be
8 responsible for the cost of constructing additional
9 pipelines and other facilities necessary to transport the
10 effluent from such location to the resort's delivery
11 point, which upon request of BCSC shall be considered a
12 contribution in aid of construction."

13 And user, as defined in this agreement, is your
14 company; correct?

15 A. Yes.

16 Q. Has your company done any research as to what the
17 cost of construction -- constructing additional pipelines
18 and other facilities necessary to transport the effluent
19 from such location to the resort's delivery point?

20 A. No.

21 Q. Do you know why?

22 A. That is not something which we would have an
23 expertise.

24 Q. Have any of the consultants or experts that you
25 have retained or talked to given you any opinion as to

1 what the cost would be?

2 A. No.

3 Q. Have any of the experts or consultants that you
4 have retained, or anybody within your company, other than
5 counsel, talked to you about what the increased rate for
6 the effluent might be if my company were forced to build a
7 new wastewater treatment plant?

8 A. No.

9 Q. Do you know, for example, if the rate increased,
10 you know, to over, say, \$200 a year -- I believe it's
11 south of \$30,000 a year right now. Actually, let me
12 strike all that.

13 Do you know what your company is paying for the
14 effluent per year now that it receives from my client?

15 A. I would have to go back and look at notes.

16 Q. Do you know whether or not your company would
17 continue under the agreement or would terminate the
18 agreement if, for example, the rate that it had to pay
19 went up 20-fold?

20 A. I'm not in a position to make that decision.

21 Q. And who is the decision-maker on something like
22 that?

23 A. That would be ownership.

24 Q. And within that ownership, who would it be?

25 A. It could be Karen Sprogis. It could be someone

1 that Karen reports to.

2 Q. And again -- I apologize if I asked this -- who
3 is Ms. Sproegis employed by?

4 A. She's -- Wind P1 Mortgage.

5 Q. Let's go back to the motion to intervene, please,
6 page 2 at the introduction.

7 Do you see that?

8 A. Yes.

9 Q. And then the first parenthetical starting at line
10 4 indicates that, "On June 15th, 2011, a prior intervenor,
11 the Boulders Homeowners' Association, BHOA, filed a
12 purported 'motion for plant closure order' that expressly
13 seeks to nullify a binding contract between The Boulders
14 and Black Mountain Sewer Corporation for the continued
15 delivery of water critical to maintaining The Boulders'
16 grounds."

17 How does it expressly seek to nullify a binding
18 private contract?

19 MR. BELLAMY: Objection to form.

20 BY MR. BOURQUE:

21 Q. Let me ask you this: Have you reviewed the
22 Homeowners' Association's motion for plant closure order?

23 A. I have read it.

24 Q. Do you know -- do you have any opinion one way or
25 the other whether it expressly seeks to nullify the

1 Effluent Delivery Agreement between your company and my
2 client?

3 A. I do not have that knowledge.

4 Q. Do you know who would at your company?

5 A. I would imagine our legal counsel, who is very
6 familiar with how that motion plays out.

7 Q. Then the next parenthetical in the introduction
8 of your company's motion to intervene indicates,
9 "Moreover, as the BHOA's pending motion demonstrates, the
10 existing parties are now actively making representations
11 characterizing The Boulders' right without its permission,
12 express or implied, or even appropriate consultation."

13 Do you know what representations are being made?

14 A. Can you tell me where you are?

15 Q. I'm sorry.

16 A. I apologize.

17 Q. No. I'm at line 12 of page 2 --

18 A. Okay.

19 Q. -- of your company's motion to intervene. And
20 that says, "The existing parties," meaning my client and
21 the Homeowners' Association, your company alleges they're
22 actively making representations characterizing The
23 Boulders' rights without its permission, expressed or
24 implied, or even appropriate consultation.

25 My question is: What representations are being

1 made?

2 MR. BELLAMY: Objection to form.

3 BY MR. BOURQUE:

4 Q. Do you know what representations are allegedly
5 being made?

6 A. Not in the context of this, without referring
7 back to the other document.

8 Q. What document would you need to refer back to?

9 A. Probably the -- the BHOA's pending motion.

10 Q. Okay. Then the third parenthetical on page 2,
11 the introduction, indicates that -- and I'm quoting now
12 from line 18 -- "That motion," and that's the BHOA's
13 motion, "fundamentally seeks to rewrite, and basically
14 erase, a critical term of the agreement between BHOA and
15 Black Mountain Sewer regarding The Boulders' contract with
16 Black Mountain Sewer."

17 Is that the same answer? You would need to see
18 the motion?

19 A. That would call -- that particular line calls for
20 a legal interpretation, so I may or may not even after
21 reviewing the motion be qualified to answer it.

22 Q. Move on, if we could, to page 3 of the motion --
23 of your company's motion to intervene, at line 9. It
24 says, "A fair resolution consistent with the terms of the
25 agreement," and that's, I think, referring to the Effluent

1 Delivery Agreement, "of course, would require that Black
2 Mountain Sewer make arrangements for The Boulders to
3 receive replacement water from some other supplier at a
4 cost consistent with the terms of The Boulders' contract
5 with Black Mountain Sewer."

6 Do you believe that to be a true statement?

7 MR. BELLAMY: Objection to form.

8 THE WITNESS: I need to put the whole thing into
9 context. Can you give me a few minutes?

10 BY MR. BOURQUE:

11 Q. We can move on. We can move on from that.
12 That's fine.

13 Please move to page 5 of the motion to intervene.
14 Line 16 indicates, "That condition makes perfect sense
15 because in that situation The Boulders presumably could
16 purchase the replacement water from an alternate supplier
17 on the market for less than the cost of Black Mountain
18 Sewer's new plant."

19 Are you aware of any alternate suppliers on the
20 market that The Boulders could buy effluent from?

21 A. I'm not aware.

22 Q. Has -- other than counsel, have you had any
23 discussions with any members of your company or anybody
24 else about alternate suppliers on the market?

25 A. We have spent a significant amount of time

1 researching alternate supplies of water.

2 Q. But an alternate supplier seems to me to be some
3 entity, rather than trying to, for example, bring up
4 groundwater or something like that.

5 A. Well, I guess that is an interpretation of the
6 word "supplier."

7 Q. Now, moving down on page 5, line 25, "Instead, it
8 is patently obvious that Black Mountain Sewer hopes to use
9 this proceeding, with the BHOA acting as Black Mountain
10 Sewer's stalking horse, to try and get off the hook on a
11 contract that Black Mountain Sewer now evidently views as
12 an inconvenience."

13 I usually use cat's paw. I haven't seen stalking
14 horse. I will look that one up.

15 But what did -- what does your company mean by
16 this, by this "stalking horse" comment?

17 A. That is not something I can respond to.

18 Q. Okay. Do you know what a stalking horse is?

19 A. Not really.

20 MR. BOURQUE: Does anybody?

21 I bet you do.

22 BY MR. BOURQUE:

23 Q. Do you believe that Greg Sorenson or Black
24 Mountain has acted in bad faith in trying to find a
25 solution to the water issue?

1 A. No.

2 Q. Do you believe that Greg's acted in good faith?

3 MR. BELLAMY: Objection to form.

4 THE WITNESS: I have not witnessed him acting
5 otherwise.

6 BY MR. BOURQUE:

7 Q. Has anybody within your company told you, other
8 than counsel, that he has done something improperly or he
9 is not genuine in trying to seek a solution?

10 A. Those are two very separate and very distinct
11 questions.

12 Q. Let's take them one at a time.

13 A. I have not heard from anyone that he has acted
14 improperly in any way.

15 Do I -- are you asking, do I believe that Black
16 Mountain has done all it could to help find a solution?

17 Q. And what is your answer there?

18 A. I don't believe so.

19 Q. What more do you think Black Mountain should or
20 could do?

21 A. Well, I think we -- that gets -- that speaks to
22 reopening the lines of communication where we -- there's a
23 free interchange of information and thought and idea.

24 Q. Are you saying that Black Mountain stopped the
25 line of communication with your company?

1 A. I believe the line of communications are not as
2 productive as they should be.

3 Q. And whose fault is that, in your opinion?

4 A. Well, it's our opinion that it's Black Mountain.
5 To Black Mountain, it's us.

6 Q. But do you have any facts in terms of what
7 Greg Sorenson or anyone on Black Mountain's behalf has
8 done or not done in terms of not being responsive or not
9 looking at feasible alternatives?

10 A. By way of example, I would like to see -- I would
11 like to have seen a circle back together to discuss the
12 replacement plant option and how that could play out, what
13 it might mean in terms of rate increases, what it might
14 mean -- so we would take it to the next step -- what it
15 might mean in terms of location, pipes, the cost of
16 construction, and so on and so forth.

17 Q. You would like to see that happen.

18 Has your counsel, to your knowledge, or have you,
19 or has anybody from your company made that request of
20 Black Mountain?

21 A. Not to my knowledge.

22 Q. What else do you think that Black Mountain could
23 or should be doing to try and resolve the water issue out
24 at The Boulders?

25 A. I think it's -- inevitably it comes down to, if

1 there are a variety of options on the table, which option
2 makes the most sense, and then together we have to sit
3 down and talk about settlement, if there is a closure, and
4 if that -- and that water has to be replaced, what is
5 Black Mountain willing to commit to that settlement and
6 that results from a termination of contract.

7 Q. But from the standpoint of running the wastewater
8 treatment plant or engaging in negotiations with your
9 company and trying to seek a solution to the water problem
10 out at The Boulders, what more do you think Black Mountain
11 could or should be doing?

12 A. I think that is all we would hope for.

13 Q. Okay. In the event that the -- a new facility is
14 constructed somewhere, are you aware of only one potential
15 location, that Juergen Nick potential location, or are
16 there other locations on the table?

17 A. I have not looked at another location. I'm aware
18 only of the Juergen Nick location.

19 Q. Has anybody done a study of the impact on the --
20 on your company if that effluent was no longer provided by
21 Black Mountain?

22 A. A specific study, no.

23 Q. Or even a general study or any kind of analysis?

24 A. I can -- I can give you a rough analysis.

25 From a -- from a revenue perspective we have

1 identified that on average five and a half million out of
2 40 million comes from golf. However, as I said in my
3 **SEE ATTACHED / KEB** testimony, The Boulders is a designation golf resort. Our
4 lodging business, if you will, which flows to all other
5 revenue sources, all revenue sources, including golf, is
6 approximately 55 percent group business -- meetings,
7 conventions, things of that nature -- and 45 percent
8 leisure travel.

9 Of that 55 percent group business, on an
10 annualized basis, 44 percent of the group guests play
11 golf. Of the 45 percent of the business that is leisure
12 travel, 37.7, so 38 percent play golf.

13 By a very quick set of extrapolation assumptions,
14 you can determine that we would lose a significant --
15 40 percent of our business would go away very quickly.
16 Between 40 and 42 percent of the business that comes to
17 the resort to play golf would disappear. Take that
18 against 40 million --

19 Q. And under that analysis, correct me if I'm wrong,
20 but the premise is that there is no golf course; right?

21 A. Correct.

22 Q. Okay. Question --

23 A. There is no -- the nature of our client is a
24 luxury client. That client has a certain standard that it
25 expects from us. If we cannot produce a golf course that

1 meets that expectation, they will choose to go elsewhere.

2 If 40 percent of our clientele choose to go
3 elsewhere, that's a loss of roughly \$16 million a year off
4 of our top line.

5 Q. But the -- what is the percentage of water that
6 is delivered to your company by my client pursuant to the
7 Effluent Delivery Agreement?

8 A. It's approximately 15 percent.

9 MR. WILEY: Off the record.

10 (Discussion off the record.)

11 BY MR. BOURQUE:

12 Q. And has anybody done an analysis as to whether
13 the golf courses would need to be shut down if the
14 15 percent weren't delivered?

15 A. Dean can give you the specifics on that, but
16 there would be significant impact on the quality of the
17 courses -- there is no question -- and there would be a
18 compromise to the quality and integrity of the courses.

19 Q. Is Dean the best person to chat with in that
20 regard?

21 A. He really is.

22 Q. Okay. I will spare you the questions then.

23 Except for one, what has Dean told you in terms
24 of what the difference would be?

25 A. Dean has gone through, and we discussed together,

1 a series of -- among our options, conservation efforts;
2 what can we do without, and what is the impact of that?

3 And we have talked about, would we have to close
4 one of the courses? Would we have to not oversee all --
5 the roughs on both courses, perhaps. Right now we
6 oversee the roughs on one course, and we don't oversee
7 on the other each year.

8 Q. Has Dean provided you with any kind of written
9 opinions or reports?

10 A. No.

11 Q. Has he e-mailed you in that regard and said, hey,
12 you know, this is how it's going to shake out if?

13 A. I would have to go back and check. I don't
14 recall if he has sent me e-mails or if we have simply had
15 a number of conversations.

16 Q. And what has been the conclusion, if any, as to
17 the impact on the folks that come to golf and the folks
18 that come to lodge at the resort? How many would you
19 lose?

20 A. We would stand to lose a good share of that
21 40 percent of our clientele --

22 Q. And how --

23 A. -- if we lost the courses -- if we lost the
24 integrity and the quality of the courses.

25 Q. That is two different things, but let's assume

1 that the courses stay open.

2 A. Uh-huh.

3 Q. Has there been any analysis done in terms of, you
4 know, if trees were missing or if grass is a certain hue
5 or shade? Has anybody done that type of analysis? You
6 can tell I'm not a golfer.

7 A. Dean can really give you the insight into what
8 the golf courses would look like at that stage of the
9 game. Tom can speak to what the golf experience is at our
10 level of luxury and what the client expects. So I would
11 recommend that you follow up with the two of them.

12 THE WITNESS: Do you mind if I get up and get
13 some water?

14 MR. BOURQUE: Not at all. Anytime. You know, if
15 we take a five-minute break, I will wrap -- I will wrap up
16 shortly thereafter. I just have to check my notes and
17 check with the client.

18 (A recess was taken from 11:54 a.m. until
19 12:06 p.m.)

20 BY MR. BOURQUE:

21 Q. You had mentioned that, I think, the revenue
22 yearly for the resort is \$40 million?

23 A. On average.

24 Q. On average.

25 How much of that is net profit?

1 A. It depends on how far north of 40 we are, because
2 that is a critical turning point. We run in the
3 neighborhood -- net, bottom line, 1 percent.

4 Q. 1 percent?

5 A. Uh-huh.

6 Q. Okay. And then same question for the revenue
7 generated by the golf courses. I think you said -- did
8 you say it was 4.5 million?

9 A. On average five and a half.

10 Q. I apologize. On average five and a half million.
11 What of that is net profit?

12 A. Departmental profit prior to water, and that is a
13 critical component because water cost is not contained
14 within golf departmental profitability and our uniform
15 system of accounts for hotels. It is contained separately
16 as a utility cost, but it -- that profit would be about 36
17 to 40 percent of five and a half million.

18 Q. Okay. And that is not including what you have to
19 pay for the water?

20 A. Correct.

21 Q. All right. And then in terms of paying for the
22 water, did you testify that you are not sure what you are
23 paying my client?

24 A. I would have to double-check my notes. I believe
25 I know what that is per-acre foot, but I would have to

1 double-check.

2 Q Okay. And then do you know, what are the other
3 sources of water? Is it the City of Scottsdale?

4 A City of Scottsdale, RWDS.

5 Q And any other sources, other than my client and
6 the City of Scottsdale?

7 A I think sewage is Carefree Water Company. I
8 think that is it. Yeah.

9 Q And do you know what you're paying the City of
10 Scottsdale for any form of water, whether it be potable or
11 irrigation?

12 A Oh, we would have different rates each for
13 potable and for irrigation. I would have -- again, I
14 would have to go back to notes and double-check. The RWDS
15 is contractual, and so I would have to go back --

16 Q Okay.

17 A -- and double-check the per-acre foot.

18 Q Okay. Bear with me one second.

19 Do you know the yearly totals of what you are
20 paying for all your water combined?

21 A Strictly golf course or all in?

22 Q Start with strictly golf course and then go --

23 A That I can't segregate.

24 Q Oh.

25 A That is why the question was critical.

1 Q. Okay. And then all in?

SEE ATTACHED / ~~KEB~~

2 A. All in, it's in the neighborhood of one and a
3 half million -- between one and a half and two million.

4 Q. And that is segregated -- and a portion of that
5 is the golf course?

6 A. Correct.

7 Q. Do you know if it's more or less than 50 percent?

8 A. I would be speculating. I would have to tear it
9 apart and segregate out all of those bills, and that would
10 take some time. But I can do that.

11 Q. And what are the other water uses, other than the
12 golf course?

13 A. The resort: every restaurant, the spa, lodging,
14 every -- every guest room --

15 Q. Yeah.

16 A. -- throughout.

17 MR. BOURQUE: You know what? I don't have any
18 further questions. I appreciate your time --

19 THE WITNESS: Sure.

20 MR. BOURQUE: -- sincerely, and thank you. And
21 we will talk about getting a copy afterwards.

22 MR. WAKEFIELD: I do have a few questions, if I
23 may.

24 MR. BOURQUE: And it's your call on whether you
25 want to relocate.

1 MR. WAKEFIELD: No, I'm fine to sit here.

2

3

EXAMINATION

4

5 BY MR. WAKEFIELD:

6 Q Let me start just reviewing a few things for some
7 clarification regarding answers you have already given.

8 You had indicated, in terms of timing of some of
9 the consultants that you had discussed, the McBride
10 Engineering report?

11 A Uh-huh.

12 Q And I know you indicated that it wasn't the
13 resort that had retained them.

14 But do you recall what the timing was, when the
15 McBride analysis was undertaken?

16 A That was when we were talking storage, and I want
17 to say -- it was last year, whether that was spring. I
18 can go seasonally in that way.

19 Q I think 2011 works.

20 And then the analysis that was undertaken by
21 Juergen Nick, when was that?

22 A Juergen's visit was last fall, just prior to the
23 meeting we had up here at Fennemore Craig, about a week
24 before that one. And I don't remember that exact date,
25 but it's probably on all of our calendars if we went back.

1 Q. Fall of 2011?

2 A. 2011.

3 Q. Okay. With respect to the various options for
4 alternative water or conservation that you have explored,
5 you indicated that none of the options were acceptable to
6 your company and that Mr. Hunter could speak to the
7 technical reasons why that was.

8 But were any of the options technically workable
9 but not accepted for some other reason?

10 A. Yes. Some of the options are -- will work
11 technically, but they are either cost prohibitive or
12 require further exploration.

13 Q. And which of the options do you understand to be
14 technically feasible?

15 A. The -- one of the options we pursued was an
16 exchange of water with Desert Mountain, whereby they would
17 give us some of their RWDS supply -- a share of their RWDS
18 water supply, and we would actually pay for them to
19 receive IWDS. So we would pay IWDS rates to get RWDS,
20 which is roughly triple the cost, if I recall. That would
21 require us buying a share of Desert -- of the IWDS line,
22 which is where the cost-prohibitive piece comes in.

23 Q. And were there other technically feasible
24 options?

25 A. Let me walk through the solutions. We walked

1 through -- let me take a look -- you know what? I will
2 steel these.

3 Let me think about those. Groundwater, not
4 technically feasible and not contractibly doable.

5 Water conservation sprinklers, not technically
6 doable.

7 Cave Creek, not doable.

8 Potable water through the City of Scottsdale is
9 technically doable. Whether it's allowed by the City of
10 Scottsdale or not is another issue altogether, but
11 technically possible.

12 And I can't speak to the technical possibility of
13 a replacement plant.

14 Q. Okay.

15 A. I mean, that technically should be doable, but I
16 can't speak to that specifically, what the complications
17 were.

18 Q. Okay. Thank you.

19 In response to the question about what plans the
20 resort might have with respect to what it would do in 2021
21 when the Effluent Delivery Agreement expires, you
22 indicated that there -- the resort -- your company has
23 made no decisions. And I thought I heard you say that you
24 have only explored alternatives in the context of this
25 process; is that correct?

1 A. Yes.

2 Q. And so what would have been the earliest date
3 that you started looking at these alternatives?

4 A. In the course of this process.

5 Q. Okay.

6 A. So subsequent to that first meeting, I think, in
7 September of 2010.

8 Q. Okay. So before September of 2010, your company
9 didn't have any -- hadn't undertaken any analysis for the
10 purpose of having a contingency plan if something made the
11 water from The Boulders East Treatment Plant unavailable?

12 A. Not during the time I have been here.

13 MR. WAKEFIELD: Okay. I just have one exhibit.

14 (Exhibit 5 was marked for identification.)

15 BY MR. WAKEFIELD:

16 Q. Ms. Madden, are you familiar with this document,
17 the Stipulation of Facts that was filed in this
18 proceeding?

19 A. Yes.

20 Q. Have you reviewed it previous to today?

21 A. I have seen it and read it previous to today,
22 yes.

23 Q. Okay. If you could just take a moment to review
24 it currently, and let me know, are there any statements
25 here in the numbered paragraphs with which you dispute the

1 accuracy of this statement?

2 A. Dispute?

3 Q. Correct.

4 A. Okay. No. 15 -- paragraph No. 15 -- watch
5 this -- line 8, page 3.

6 MR. BOURQUE: Very nice.

7 THE WITNESS: "The resort obtains approximately
8 10 percent of its irrigation water," I don't know how
9 technical we want to be here, but I believe it's
10 15 percent.

11 BY MR. WAKEFIELD:

12 Q. Okay.

13 A. And I am not disputing, but I simply can't
14 validate the number of Black Mountain customers,
15 residents, Boulders, and others. Those facts I can't
16 stipulate to, but I don't have any particular correction
17 or objection to them.

18 Q. Okay. Thank you. I appreciate that.

19 Now, Ms. Madden, you indicated earlier that you
20 first experienced the odors from the treatment plant, or
21 whatever the source of the odors were, the sewer-related
22 odors, when you began playing the course about five and a
23 half years ago.

24 Were you aware of odor issues from the sewer
25 system before that time?

1 A. No.

2 Q. Okay. And you rated the level of those odors as
3 a 6 to an 8.

4 Would you characterize that as a level of odor
5 that is offensive?

6 A. Some days more than others, yeah. Some days
7 barely noticeable. Some days about a 6 and others about
8 an 8. For me it was not an issue. I was playing through.

9 Q. Okay. Are you aware of whether there have been
10 any complaints from any of the resort guests regarding the
11 odors?

12 A. I understand there have been complaints --

13 Q. And do --

14 A. -- and questions.

15 Q. Do you know over what period of time those
16 complaints --

17 A. Tom can speak to that.

18 Q. Okay.

19 A. Personally, I can't.

20 Q. Now, in your testimony that was filed at the
21 Commission, at page 6, beginning at line 15, the sentence
22 says, "When the idea of plant closure was presented to us,
23 it was" -- do you see that sentence?

24 A. Yes.

25 Q. Okay. When was it that you are referring to,

1 that the idea of plant closure was presented to the
2 resort?

3 A. I believe the first -- the first time we had a
4 discussion and learned of the desire to get a plant
5 closure was late fall/early winter of 2009/2010. So
6 November -- somewhere between November and February, I
7 would guess, of 2009 to 2010.

8 Q. So before November of 2009, the company was not
9 aware of any proposal that involved closing the wastewater
10 treatment plant?

11 A. To the best of my recollection.

12 Q. Okay. Do you know whether Mr. McCahan or
13 Mr. Hunter would have any additional knowledge on whether
14 there were earlier communications?

15 A. They might.

16 Q. Okay. Thank you.

17 If you could look at the Effluent Delivery
18 Agreement that was marked as Exhibit 3.

19 A. Uh-huh. Yes.

20 Q. And at page 5 you discussed the concept of laws
21 and regulations and orders and regulatory requirements
22 that might limit the operation of the plant.

23 Does the resort dispute that the Commission has
24 the authority to order the plant to be closed?

25 MR. BELLAMY: Objection to form.

1 THE WITNESS: I don't think the resort would --
2 you know, we rely completely on legal counsel for that. I
3 don't think we have an opinion on that.

4 BY MR. WAKEFIELD:

5 Q. If the Commission were to enter an order ordering
6 Black Mountain to close its plant, do you know whether
7 your company would appeal that order?

8 MR. BELLAMY: Objection to form.

9 THE WITNESS: I can't speculate on that.

10 BY MR. WAKEFIELD:

11 Q. Now, you're aware that the Homeowners'
12 Association has asked the Commission to order that the
13 plant be closed; is that correct?

14 A. That's correct.

15 Q. Okay. And does the resort oppose closure of the
16 plant, per se, or are there only limits as to what the
17 resort's opposition to plant closure might be?

18 MR. BELLAMY: Objection to form.

19 THE WITNESS: Let me see if I can -- are you
20 asking that if water were replaced -- if we were able to
21 get water from another source, we would object to the
22 plant being closed? Is that your question?

23 BY MR. WAKEFIELD:

24 Q. Okay. If -- let me rephrase it to that, and then
25 I will step through a few others.

1 If you had an alternative source of the water
2 necessary to irrigate the golf courses, then the resort
3 would not oppose closure of the plant; is that correct?

4 A. Assuming that source was affordable, the resort
5 would not object.

6 Q. Okay. Are there other things that might possibly
7 occur or be available that would allow the resort to not
8 oppose closure of the plant, other than replacement water?

9 MR. BELLAMY: Objection to form.

10 THE WITNESS: I'm not sure I understand.

11 BY MR. WAKEFIELD:

12 Q. Okay. You said affordable replacement water, if
13 there were -- affordable alternative water available you
14 wouldn't oppose closure.

15 Are there other things, other than affordable
16 replacement water, that would allow the resort to not
17 oppose closure of the plant?

18 A. Rain.

19 Q. Okay.

20 A. Lots of it, frequently. Of course, that gets
21 into the affordable water.

22 I'm not certain I understand or I have an idea of
23 what those might entail.

24 Q. So nothing comes to mind other than that? Okay.

25 Thank you.

1 Now, what is the resort asking the Commission to
2 do with respect to the Homeowners' motion seeking plant
3 closure?

4 MR. BELLAMY: Objection to form.

5 THE WITNESS: Our goal is to be heard by the
6 Commission.

7 BY MR. WAKEFIELD:

8 Q And what is it that you want the Commission to
9 hear?

10 A That we are also a customer of Black Mountain.
11 We are a solid, tax-paying entity of this county and the
12 City of Scottsdale, and that we have a vested interest in
13 the water supply that is provided by Black Mountain. We
14 have total compassion for the odor issues that the BHOA
15 has been struggling. We also recognize that to not have
16 an affordable replacement water supply jeopardizes our
17 economic future and the value of the homes of the Boulders
18 Homeowners' Association.

19 Q Okay. Anything else?

20 A That would pretty much do it.

21 Q Okay. Now, your reference there was to --
22 included vested interest in the effluent or something -- I
23 think you used the term "water supply from Black Mountain
24 Sewer."

25 You would agree that the only water you are

1 getting from the sewer company is the effluent; is that
2 correct?

3 A. Yes.

4 Q. Okay. You have other potable water sources?

5 A. Yes.

6 Q. The City of Scottsdale you referred to; correct?

7 A. Yes. Yes.

8 Q. Does the resort believe that the sewer company
9 has any obligations to provide that effluent, other than
10 obligations that arise under the Effluent Delivery
11 Agreement?

12 MR. BELLAMY: Objection to form.

13 BY MR. WAKEFIELD:

14 Q. Let me put this it this way: The Effluent
15 Agreement can expire by its own term as early as 2021?

16 A. Yes.

17 Q. Okay. If that were to occur, would there be any
18 other reason that Black Mountain Sewer would be obligated
19 to provide effluent to the resort?

20 MR. BELLAMY: Objection to form.

21 THE WITNESS: You are asking me to interpret the
22 legal contract in a way, I think.

23 BY MR. WAKEFIELD:

24 Q. No. I'm saying after the contract terminates --

25 A. After the contract expires --

1 Q. -- by it's own terms --

2 A. -- by --

3 THE COURT REPORTER: I need one at a time.

4 THE WITNESS: Sorry.

5 BY MR. WAKEFIELD:

6 Q. Are there any other reasons that the
7 company -- that the sewer company would have to provide
8 effluent to the resort after the contract expires?

9 A. Not to my knowledge.

10 Q. Okay. So that vested interest in the effluent
11 that you had referred to is an interest that arises
12 exclusively under the Effluent Delivery Agreement?

13 I think she needs an oral answer.

14 A. Yes.

15 Q. Thank you.

16 Feel free to refer to the Effluent Delivery
17 Agreement in responding to these questions here. I want
18 to kind of explore what the resort's position is.

19 If the Commission were to order the treatment
20 plant to be closed, do you believe that the sewer company
21 still has obligations -- would still have obligations to
22 the resort?

23 MR. BELLAMY: Objection to form.

24 THE WITNESS: I think that that is an argument
25 that the lawyers will have to make when that happens, if

1 that happens.

2 BY MR. WAKEFIELD:

3 Q Is the resort asking the Commission to make that
4 determination, of whether there are obligations that the
5 sewer company would have to the resort?

6 MR. BELLAMY: Objection to form.

7 THE WITNESS: Is the resort asking the Commission
8 to make the determination?

9 BY MR. WAKEFIELD:

10 Q As to whether the sewer company would have any
11 ongoing obligations to the resort, if the Commission
12 ordered the plant to be closed?

13 A I would have to review those documents again to
14 see exactly how we have worded our request.

15 Q Okay. Let me kind of recharacterize the
16 question.

17 Is it the Commission that you are asking to
18 decide that question, or do you recognize that that
19 question might be teed up in another forum?

20 MR. BELLAMY: Objection to form.

21 THE WITNESS: I don't even understand what you
22 meant. So sorry. Maybe I'm hungry.

23 BY MR. WAKEFIELD:

24 Q Is that -- I think we are okay there. Thank you.

25 MR. WAKEFIELD: I think those are all my

1 questions. Thank you, Ms. Madden.

2 THE WITNESS: You're welcome.

3 MR. BOURQUE: Nothing further.

4 MS. MITCHELL: I do have just one or two. I just
5 need some clarification on a couple things that you said.

6

7

EXAMINATION

8

9 BY MS. MITCHELL:

10 Q. I'm Robin Mitchell. I'm the attorney
11 representing Commission Staff.

12 You indicated in answer to a question from
13 Mr. Bourque that you thought that the replacement plant
14 was the best long-term solution, and I think I am quoting
15 you right on that.

16 But then you also have testified that there is --
17 in the resort's position there is not a solution that is
18 affordable.

19 So is the replacement plant just in theory would
20 be the best solution but it's not an economic solution in
21 the resort's mind?

22 A. I have not been able to see any numbers. I
23 haven't seen any numbers on what that water cost would
24 look like at the end of the day if we were to pursue that
25 replacement plant option. So I kind of have to exclude

1 that. It conceptually makes the most sense to me, to me,
2 not a water expert, but I haven't seen the economics of it
3 yet.

4 Q. Thank you.

5 And in response to a question from Mr. Wakefield,
6 I think you indicated that you -- that the resort became
7 aware of the settlement agreement in November of 2009?

8 A. The settlement agreement?

9 Q. Between the HOA and Black Mountain.

10 A. Oh, I'm not sure that I termed that as a
11 settlement agreement.

12 We became --

13 Q. Well, the plant closure. Let me rephrase it
14 then.

15 The plant closure was a possibility?

16 A. Was a possibility. We were aware at that point
17 in time that that is what the desire of the homeowners was
18 and they were going to move forward to work on that. That
19 was their goal, and they were -- they advised us of that.

20 Q. And was the resort aware that there was a rate
21 case proceeding that was going on to determine new rates
22 for Black Mountain?

23 A. Prior to that --

24 Q. Yes.

25 A. -- situation, no.

1 Q All right. And if there had been notice to the
2 resort concerning the rate case proceeding, do you know
3 who that would have gone to?

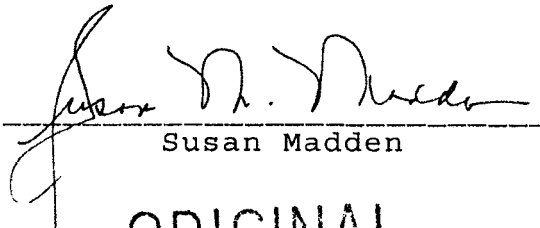
4 A It presumably would have been served to our
5 attorney of record.

6 MS. MITCHELL: I don't have anything else. Thank
7 you so much.

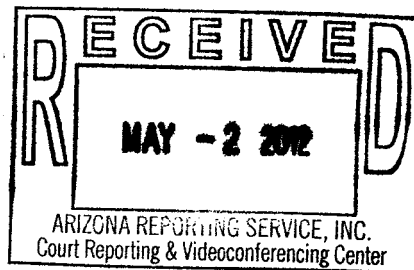
8 THE WITNESS: Anybody else?

9 MR. BOURQUE: You are free. Thank you.

10 (Deposition concluded at 12:39 p.m.)
11
12
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16
17
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19
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25


Susan Madden

ORIGINAL



1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing deposition was taken
5 by me, KATE E. BAUMGARTH, RPR, Certified Reporter No.
6 50582 for the State of Arizona, and by virtue thereof
7 authorized to administer an oath; that the witness before
8 testifying was duly sworn by me; that the questions
9 propounded by counsel and the answers of the witness
10 thereto were taken down by me in shorthand and thereafter
11 transcribed under my direction; that a review of the
12 transcript by the witness was requested; that the
13 foregoing pages contain a full, true and accurate
14 transcript of all proceedings and testimony had, all to
15 the best of my skill and ability.

16 I FURTHER CERTIFY that I am in no way related to nor
17 employed by any of the parties hereto, nor am I in any way
18 interested in the outcome hereof.

19 DATED at Phoenix, Arizona, this 1st day of April,
20 2012.

21 
22 Kate E. Baumgarth, RPR
23 Certified Reporter, No. 50582
24
25

**RYLEY CARLOCK
& APPLEWHITE**
Attorneys

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June 3, 2011

HAND-DELIVERED

Jay Shapiro, Esq.
Fennemore Craig
3003 N. Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913

Re: The Boulders v. Black Mountain Sewer Corporation

Dear Mr. Shapiro:

We are writing to you in your capacity as counsel for Black Mountain Sewer Corporation ("Black Mountain Sewer"). Please be advised that Michele Van Quathem and I have been engaged by Wind P1 Mortgage Borrower, LLC, doing business as The Boulders ("The Boulders"), along with co-counsel Janet Betts and Danelle Kelling, to represent it in connection with enforcing its rights under the 2001 Effluent Delivery Agreement with Black Mountain Sewer. In accordance with our instructions, pursuant to Paragraph 14(a), we formally invoke and require that Black Mountain Sewer's Designated Representative personally meet and confer with us at the earliest practicable date to engage in good-faith negotiations to resolve our pending dispute. Pursuant to Paragraph 14(b), if we are unable to resolve this dispute promptly, we reserve the right to initiate binding arbitration of all issues subject to arbitration, including but not limited to damages. In invoking this process, we are not waiving our right to pursue any and all legal and equitable remedies through the courts or in any appropriate administrative proceedings, through direct legal actions or through intervention in existing actions or proceedings, in our sole discretion.

We have formally invoked this meeting process under our contract in light of the long and disappointing history of informal discussions with Black Mountain Sewer. We have attempted in good faith to cooperate with Black Mountain Sewer to find appropriate solutions, but Black Mountain Sewer to date has failed to provide any assurances of its intentions to honor its contractual obligations to The Boulders, or to provide suitable replacement water without detriment to The Boulders. In fact, in reviewing the history of these discussions, Black Mountain Sewer has repeatedly appeared to disregard or dismiss those obligations. Moreover, to add insult to injury, in expressly seeking to terminate Black

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Madden EXHIBIT
DATE *3-21-12*
Kate E. Baumgart, RPR, CR No. 50582

Jay Shapiro, Esq.
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Attorneys

Mountain Sewer's contractual obligations to The Boulders without securing replacement water or offering any compensation (or even offering the land at a substantially reduced purchase price), the draft document you just forwarded to Ms. Kelling underscores Black Mountain Sewer's unjustified and irresponsible refusal to honor or even to acknowledge those obligations.

Consistent with your client's refusal to acknowledge its obligation, Black Mountain Sewer has stated that it has no intention of properly compensating The Boulders in the event that Black Mountain Sewer elects to close its wastewater treatment plant. Black Mountain Sewer's failure to acknowledge its continuing obligation to The Boulders not only constitutes an anticipatory breach of contract, but also demonstrates bad faith in regard to Black Mountain Sewer's obligations. Accordingly, we have been retained to pursue appropriate legal action if Black Mountain Sewer does not promptly propose an appropriate resolution acceptable to The Boulders. In addition to seeking appropriate declaratory and other equitable relief as well as damages, we will also seek reimbursement of The Boulders' attorneys' fees and expenses.

There is no reasonable question that Black Mountain Sewer bears the legal responsibility to make appropriate arrangements to provide The Boulders with suitable replacement water after Black Mountain Sewer ceases operations at its wastewater treatment plant. The Effluent Delivery Agreement contractually obligates Black Mountain Sewer to provide 150,000 gallons per day to The Boulders at the contractually specified price for the 10-year term remaining under the contract, or through 2021. Moreover, pursuant to Paragraph 6, subparagraphs (a) and (c), Black Mountain Sewer made specific representations and covenants in the agreement, including to "[m]ake such repairs, upgrades and improvements to the Boulders East Plant as may be necessary" to operate the facility to meet Black Mountain Sewer's obligations to The Boulders. By failing to address the facility's odor issues in a timely fashion to the residents' satisfaction, and instead allowing the situation to continue to the point where Black Mountain Sewer has instead negotiated an intended closure plan, Black Mountain Sewer has violated its covenants and acted in a fashion intended to deprive The Boulders of its benefits under the agreement.

Moreover, The Boulders had the legal right to rely on these representations, covenants and promises under the agreement, and in fact, has done so. But for the existence of these legally binding commitments by Black Mountain Sewer, The Boulders would undoubtedly have pursued other water sources and solutions over the last decade. However, having relied, as we were entitled to do, on Black Mountain Sewer's 20-year contractual commitment, options that might have been more cost-effective if pursued years ago are now either unavailable, impractical or infeasible because of the extraordinary costs. Black Mountain Sewer's conduct has left The Boulders in this highly problematic situation, and Black Mountain Sewer is legally responsible to The Boulders to address this situation and take steps to mitigate The Boulders' existing and potential damages. Quite simply, and with

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no pun intended, Black Mountain Sewer has acted as if it is somehow acceptable to leave The Boulders "high and dry" while pursuing an intended plant closure.

Leaving aside the fact that Black Mountain Sewer's conduct leading up to the intended plant closure was itself a breach of the agreement with The Boulders, Black Mountain Sewer cannot simply terminate its obligations to The Boulders without its consent. Indeed, we are troubled by Black Mountain Sewer's negotiated condition in its intended closure plan that specifies that it be allowed to terminate the obligation to The Boulders at little to no economic cost. That condition could not have been stipulated in good faith because, as already noted, The Boulders has relied on that agreement, and it is Black Mountain Sewer's responsibility to mitigate (or, if necessary, compensate) The Boulders under these circumstances.

Specifically, we expect and demand that Black Mountain Sewer agree to the following terms:

(1) Black Mountain Sewer must cooperate with and assist The Boulders in making arrangements for replacement water pursuant to a plan that will ensure that such water is available, and will be delivered without any interruption in service created by the closure of the wastewater treatment plant, or any reduction in its service leading up to that closure.

(2) In the event that any replacement water secured under paragraph 1 above involves additional costs beyond the amount that would have been owed by The Boulders under the Effluent Delivery Agreement, then Black Mountain Sewer will accept responsibility for paying or reimbursing these costs.

(3) Black Mountain Sewer will not continue to represent or imply to the Arizona Corporation Commission or any other public entity that Black Mountain Sewer may be able to evade its financial responsibility to The Boulders. We do not consent to any such representation and, in fact, are sending you this letter to inform you explicitly that we reserve and intend to enforce our legal rights in this matter to the fullest extent possible, unless a good-faith effort by Black Mountain Sewer results in a mutually acceptable resolution within the next 30 days.

(4) Black Mountain Sewer will agree to keep The Boulders fully informed about, and will consult with, The Boulders and its legal counsel regarding any legal action, including court cases and administrative proceedings, as well as enforcement actions or government investigations. Black Mountain Sewer must agree that it will not oppose any motion or other effort by The Boulders to intervene in any such matters.

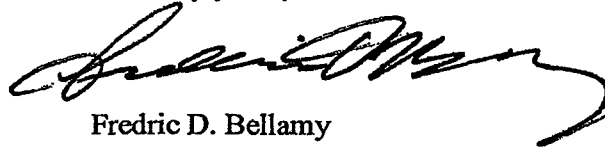
Jay Shapiro, Esq.
June 3, 2011
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& APPLEWHITE
Attorneys

In exchange for Black Mountain Sewer's agreement to these terms, The Boulders will agree not to pursue its current damages or attorneys' fees and expenses from Black Mountain Sewer. We are willing to waive such claims in exchange for a prompt agreement by Black Mountain Sewer to honor its obligations because we believe that continued cooperation and compromise would be in the best interests of the parties and of the community. However, please understand that we reserve all rights to prosecute any and all available claims, if we are forced to take legal or other action to protect our interests in this matter.

Pursuant to Paragraph 14(a) of the Effluent Delivery Agreement, we are sending copies of this letter to the designated addressees for receipt of formal notices. Please advise us at your earliest opportunity of your and your client's availability for a meeting with us to discuss and attempt to resolve this dispute.

Sincerely yours,



Fredric D. Bellamy

FDB/sdd

cc: Black Mountain Sewer Company (via Federal Express)
c/o Mr. Greg Sorensen
Suite 201, 1962 Canso Road
Sidney, British Columbia
Canada V8L 5V5

Algonquin Power Income Fund (via Federal Express)
c/o Mr. Peter Kampian
Algonquin Power Corporation, Inc.
#210, 2085 Hurontario Street
Mississauga, Ontario L5A 4G1

WASTEWATER TREATMENT PLANT CLOSURE AGREEMENT

This WASTEWATER TREATMENT PLANT CLOSURE AGREEMENT (this "Agreement") is made this 17th day of September, 2009, by and between the BOULDERS HOME OWNERS ASSOCIATION, a non-profit Arizona corporation ("BHOA") and BLACK MOUNTAIN SEWER CORPORATION, an Arizona public service corporation ("BMSC") (individually, a "Party" and collectively, "Parties"), for the purposes and consideration set forth hereinafter.

RECITALS

A. BMSC is a public service corporation as defined in Article 15, Section 2 of the Arizona Constitution. BMSC owns and operates certain wastewater collection, transmission and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "ACC") authorizing BMSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale.

B. BHOA is an association of 332 home and property owners in the northern portion of the area known as the Boulders community in North Scottsdale and Carefree, Arizona. A map depicting the general location of the Boulders community is attached hereto as Exhibit A to this Agreement. The Boulders community also includes the Boulders Resort and Club (the "Resort"). The Resort is located in north Scottsdale and includes a hotel, clubhouse, pool, tennis courts, various landscaped areas, two 18-hole championship golf courses, and numerous residential units. BHOA owns and controls the common areas and BHOA and its members are customers of BMSC, as the entire Boulders community is located within BMSC's certificated service territory.

D. At the present time, BMSC operates a single wastewater treatment plant known as the Boulders East Plant (the "Plant") within the Resort. The Plant currently has a permitted capacity of 120,000 gallons per day ("gpd") and a maximum treatment capacity of 160,000 gpd. BMSC currently treats an average 120,000 gpd of wastewater and delivers all effluent from the Plant to the Resort pursuant to an Effluent Delivery Agreement, dated March 2001. The remainder of BMSC's wastewater is delivered to the City of Scottsdale for treatment, pursuant to a Wastewater Treatment Agreement, dated April 1, 1996 ("Scottsdale Agreement").

E. As required by ACC Decision No. 69164 (December 5, 2006), BMSC has made substantial improvements to its wastewater collection systems. These improvements have been successful in addressing odors from the Company's collection system. However, fugitive odors continue to be a problem at the Plant, as do intermittent noises and traffic from an assortment of trucks and related vehicles servicing the Plant due primarily to its location within the BHOA and in the immediate proximity of residential properties. Because these odors and noises remain largely within the Plant's normal operating parameters, the parties believe that the only viable remedy to remove all odors and noises/truck traffic from the surrounding community is closure of the Plant. This is true, despite the parties' agreement that the Plant is being operated by

bss

Madden EXHIBIT 2
DATE 3-21-10
Kate E. Baumgarth, RPR, CR No. 50582

BMSC in compliance with all applicable law and regulation, and that such utility property is a used and necessary asset of BMSC.

F. BHOA represents that the closure of the Plant is supported by the Boulders community, the Town of Carefree, and the City of Scottsdale, all of whom, in addition to BMSC's customers, have an interest in the closure of the Plant. Therefore, in order to pursue closure of the Plant, the Parties desire to enter into an agreement setting forth the terms and conditions under which BMSC will close the Plant and clarify each Party's rights and obligations with respect to that closure and the associated regulatory and ratemaking approvals.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals. Each of the recitals set forth above are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. Closure of the Plant. BMSC agrees to close the Plant subject to the terms and conditions set forth hereinafter. As used herein, the terms "closure" and "close" in reference to the Plant shall mean the termination of the wastewater treatment operations at the Plant, removal of the physical structure of the Plant and the associated equipment that is not necessary for the continued operation of the wastewater collection and transportation systems and remediation and restoration of the Plant's associated property as required by applicable law and regulation.

a. Conditions Precedent to Plant Closure. BMSC agrees to commence the closure of the Plant if the following conditions are satisfied:

i. Downstream Collection System Line Capacity. The downstream collection system line from the Plant to the City of Scottsdale must have sufficient capacity to support an additional 120,000 gpd flow of wastewater. If engineering evaluations conducted by BMSC or its agents determine that the downstream collection system line lacks sufficient capacity to support the extra flow, BMSC agrees to upgrade the system to provide sufficient capacity for additional flow if it determines, in its discretion and in consultation with BHOA, such an upgrade is not prohibitively expensive for BMSC and is in the best interests for BMSC and its ratepayers.

ii. Flow-through to the City of Scottsdale. Engineering evaluations conducted by BMSC or its agents must demonstrate that the Plant's intake and outflow lines can be connected to permit flow-through of wastewater to the City of Scottsdale's wastewater treatment system in the same or similar manner as BMSC currently delivers flows from its customers to the City of Scottsdale system under the Scottsdale Agreement. BMSC agrees to modify the Plant's system to permit such flow-through if it determines, in its discretion and in consultation with BHOA, such an upgrade is not prohibitively expensive for BMSC and is in the best interests for BMSC and its ratepayers.

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iii. Wastewater Treatment Agreement with the City of Scottsdale. BMSC must successfully negotiate the purchase of 120,000 gpd of additional wastewater treatment capacity to treat the flows currently being treated at that Plant. In addition, BMSC must sign an amendment to the Scottsdale Agreement that (1) extends BMSC's right to purchase additional capacity beyond December 21, 2016; (2) states that BMSC's right to capacity shall survive the termination of the Scottsdale Agreement; (3) states that the City of Scottsdale cannot terminate the Scottsdale Agreement if BMSC closes the Plant; and (4) provides BMSC the long-term right to purchase additional capacity at market rates.

iv. Effluent Agreement with the Resort. BMSC currently has an agreement with the Resort which requires BMSC to deliver all effluent generated at the Plant to the Resort through March 2021. In the agreement, BMSC covenanted to continue to operate the Plant and to not reduce the amount of effluent produced by the Plant. BMSC must sign an agreement with the Resort whereby the Resort agrees to allow the termination of the Effluent Agreement at no or limited cost to BMSC.

v. Approval of Plant Closure. BMSC must seek and obtain all the necessary local, county, state, and/or federal approvals for the closure of the Plant.

vi. ACC Approval of Cost Recovery for Plant Closure. ACC must approve a cost recovery mechanism that permits BMSC to recover a return on and of the capital costs of closure, which costs include, without limitation, the costs of procuring additional capacity from the City of Scottsdale, the costs of engineering and other analyses necessary to complete the closure, any system upgrades required as a result of the closure and/or the delivery of the flows previously treated at the Plant to the City of Scottsdale. BMSC must also be authorized recovery of any reasonable costs of reaching agreement with the BHOA, the City of Scottsdale and the Resort as required to fulfill the terms of this Agreement, including, without limitation, the costs of obtaining all necessary approval from the ACC, including rate case expense. BMSC shall have no obligation under this Agreement if the ACC does not approve such cost recovery mechanism as acceptable to BMSC in its sole discretion.

b. Termination of Operations at the Plant. BMSC agrees to use all commercially reasonable efforts to complete termination of its operation of the Plant within 15 months of the satisfaction of conditions listed in Sections 2(a) (i) – (vi), subject to government approvals and the terms and conditions set forth hereinafter.

c. Removal of Plant Structure and Associated Equipment. After terminating its operations, BMSC agrees to remove the Plant's physical structure from the Plant Property. The "Plant Property" includes the 1.03 acres of the current Plant site. BMSC agrees to remove any associated equipment or structures from the property that are not necessary for the continued operation of its wastewater collection or transportation systems.

d. Remediation of the Plant Property. BMSC agrees to be responsible for the proper management, handling, transportation, storage and disposal of any hazardous substances generated by BMSC's activities on the Plant Property. BMSC is responsible for remediating the hazardous substances directly generated by its activities on the Plant Property to the level required by applicable laws, if such remediation is required by an applicable law. The term

"Hazardous Substances" shall mean any substance, material, pollutant, contaminant, or waste, whether solid, gaseous or liquid, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, and that is regulated, defined, listed or included in any Applicable Laws, including, without limitation, asbestos, petroleum, petroleum or fuel additives, polychlorinated biphenyls, urea formaldehyde, or waste tires.

e. Restoration of the Plant Property. BMSC agrees to restore the surface and subsurface of the Plant Property to a safe and stable condition. Further, upon completing closure of the Plant structure, BMSC and its agents shall remove from the Plant Property all tools, excavated material, personal property, rubbish, waste and surplus materials in connection with the closure and/or previous operation of the Plant and leave the Plant property free and clear from all obstructions and hindrances until such time that residential structures may be constructed on the site.

3. Ownership of Plant Property. BMSC will have full and complete ownership of the Plant Property after the completion of the closure, remediation and restoration. Within 60 days of BMSC completing removal of the Plant's physical structure from the Plant Property, BHOA agrees to contribute or work with BMSC to enable transfer of the 0.2+ acres of land adjacent to the Plant to BMSC to enable development of the Plant Property. Thereafter, BMSC will determine, in its discretion, the best time to market the residential property so as to maximize its value, subject to local laws and rules applicable to development within the BHOA. BMSC further agrees to seek ratemaking treatment of such gain that would result in an equal sharing of the gain between BMSC's shareholders and ratepayers, and BHOA agrees to provide support for such ratemaking treatment of any gain of the Plant Property. Gain on sale shall be that amount over and above BMSC's basis in the Plant Property. The gain on sale shall exclude the proceeds from the 0.2+ acres "contributed" by BHOA. All proceeds from the sale of the 0.2 acres "contributed" by BHOA shall be allocated towards reducing the rate base and costs of the closure of the Plant

4. Costs of the Closure of the Plant. BMSC will be responsible for all costs related to the closure of the Plant, notwithstanding BHOA's contribution discussed in Paragraph 3.

5. Covenants.

- a. BMSC covenants and agrees to negotiate in good faith and with promptness the modifications to the agreements contemplated in Sections 2(a)(iii) and 2(a)(iv) above.
- b. BHOA covenants and agrees to lend assistance and support as requested by BMSC in relation to BMSC's efforts to close the Plant, including assisting and supporting BMSC as requested in relations to BMSC's efforts with the City of Scottsdale and the Resort. BHOA specifically covenants to assist and support BMSC, publicly and privately, in its efforts before the ACC to obtain recovery of its costs incurred under this Agreement, including rate case expense, as contemplated in Section 2.a.iv above. BHOA agrees and acknowledges that recovery of a return on and of the capital investments and the expenses incurred by BMSC and/or its parent company in reaching and

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obtaining the necessary approvals of the Agreement and thereafter closing the Plant will likely result in the need for higher utility rates by BMSC.

- c. Both Parties covenant and agree to not interfere with or cause an unreasonable delay in the removal of the Plant.

6. Risk and Indemnification. Subject to the limitations set out herein, BMSC hereby assumes any and all risks associated with the Plant's closure or other actions to be conducted by BMSC pursuant to this Agreement. BHOA shall not seek indemnification from BMSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines, liabilities or other losses arising out of any breach or default in the performance of this Agreement by BHOA.

7. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, floods, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, unavailability of or delays in receipt of materials, supplies or equipment, or any other cause, whether of similar nature, not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with reasonable diligence to correct or eliminate the condition causing the force majeure and do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

8. Term of Agreement. This Agreement shall terminate when the Parties have performed all of their obligations under this Agreement, but no earlier than the time BMSC has obtained favorable ratemaking for the costs of the closure.

9. Termination of Agreement.

a. Termination for Breach. Either Party may initiate proceedings for termination of this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 12, below.

b. Failure of Conditions to Plant Closure. If any of the conditions listed in Paragraphs 2(a) (i) – (vi) are not satisfied, either Party may initiate proceedings for termination of this Agreement. In such event, the Party contending that a failure of a condition has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 11, below.

10. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express

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Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BMSC to: Greg Sorensen
Black Mountain Sewer Corporation dba Liberty Water
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85392

With a copy to: Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012

If to BHOA to: Ted Wojtasik
Rossmar & Graham
9362 E. Raintree Drive
Scottsdale, AZ 85260

With a copy to: Scott Wakefield
Ridenour, Hinton & Lewis
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85004

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

11. Dispute Resolution. The Parties agree to use good faith efforts to resolve, through negotiation, disputes arising under this Agreement. If the Parties are unable to resolve the dispute within sixty (60) days, a Party that still believes the dispute requires resolution may pursue mediation or arbitration or commence litigation in a court or other tribunal of appropriate jurisdiction.

12. Attorneys' Fees. In the event either Party hereto finds it necessary to employ legal counsel or to bring an action at law or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be paid its reasonable attorneys' fees and costs, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a proceeding for the purposes of this paragraph.

13. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

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14. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement. Each Party shall cooperate with and provide reasonable assistance to the other party to obtain all required approvals and consents necessary to effectuate and perform this Agreement.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

16. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

17. Construction. The terms and provisions of this Agreement represent the results of negotiations between BMSC and BHOA, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BMSC and BHOA each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement. This Agreement represents the Parties' mutual desire to compromise and settle disputed issues. The acceptance by any Party of a specific element of this Agreement shall not be considered precedent for acceptance of that element in any other context. Nothing in this Agreement shall be construed as an admission by any Party as to the reasonableness or unreasonableness or lawfulness or unlawfulness of any position previously taken by any other Party. No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Party shall offer evidence of conduct or statements made in the course of negotiating this Agreement before the Commission, any other regulatory agency, or any court. The invalidity of any provision of this Agreement shall in no way affect any other provision hereof.

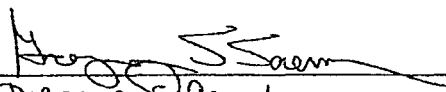
18. Interpretation. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BMSC and BHOA with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BMSC and BHOA and sets forth the entire agreement between the parties with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument, letter or other agreement executed in connection with or furtherance of this Agreement, the term, provision, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

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19. Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, BMSC and BHOA have executed this Wastewater Treatment Plant Closure Agreement as of the date and year first written above.

BLACK MOUNTAIN SEWER CORPORATION
An Arizona corporation.

By 
Its Director of Operations

BOULDERS HOME OWNERS ASSOCIATION
A non-profit Arizona corporation

By _____
Its _____

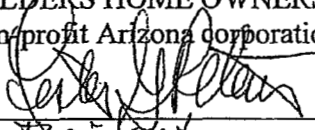
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IN WITNESS WHEREOF, BMSC and BHOA have executed this Wastewater Treatment Plant Closure Agreement as of the date and year first written above.

BLACK MOUNTAIN SEWER CORPORATION
An Arizona corporation.

By _____
Its _____

BOULDERS HOME OWNERS ASSOCIATION
A non-profit Arizona corporation

By  _____
Its President _____

EFFLUENT DELIVERY AGREEMENT

THIS EFFLUENT DELIVERY AGREEMENT (this "Agreement") is made this ____ day of March, 2001 between THE BOULDERS CAREFREE SEWER CORPORATION, an Arizona corporation ("BCSC"), and BOULDERS JOINT VENTURE, an Arizona general partnership ("User"), sometimes referred to herein as a "Party" or collectively as the "Parties," for the purposes and consideration set forth hereinafter.

RECITALS:

A. BCSC owns and operates certain wastewater collection and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "Commission") authorizing BCSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale, Arizona, including the sale of treated effluent ("Effluent") resulting from the operation of BCSC's treatment facilities.

B. User owns and operates a destination resort in north Scottsdale commonly known as The Boulders Resort and Club ("the Resort"). The Resort includes a hotel, clubhouse, pool, tennis courts, various landscaped areas and two 18-hole championship golf courses (the "Golf Courses"), and is located within BCSC's certificated service territory.

C. At the present time, BCSC operates a single wastewater treatment plant known as the Boulders East Plant. This treatment plant currently has a permitted capacity of 120,000 gallons per day ("gpd"). BCSC intends to seek approval to increase the treatment plant's permitted capacity to 150,000 gpd. The remainder of BCSC's wastewater is delivered to the City of Scottsdale for treatment.

D. BCSC currently delivers all of the Effluent produced by the Boulders East Plant to the Resort, pursuant to that certain Agreement, dated March, 18, 1986, as amended by that certain First Amendment to Agreement, dated March 18, 1996. The Resort utilizes the Effluent for

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DATE 3-25-01
Kath E. Bourgeois, RPR, CR No. 50582

irrigation and maintenance of the turf, trees, shrubs and other landscaping at the Golf Courses, for the filling and refilling of storage reservoirs at the Golf Courses, and for related exterior uses.

E. The Parties desire to enter into a new agreement in order to modify certain terms and conditions, which shall supersede and replace the existing agreement, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

AGREEMENTS:

1. Purchase and Sale of Effluent. BCSC agrees to sell and deliver and User agrees to purchase and accept delivery of all Effluent generated by the Boulders East Plant subject to the terms and conditions set forth hereinafter.

2. Service and Delivery of Effluent. BCSC shall deliver and User shall accept Effluent as follows:

(a) Quantity of Effluent. BCSC shall deliver to the Resort all Effluent generated by the operation of the Boulders East Plant (or a new wastewater treatment facility which may be constructed by BCSC as contemplated herein). In the event the treatment capacity of the Boulders East Plant is increased to a capacity greater than 150,000 gpd, or a new wastewater treatment facility is constructed by BCSC to replace the Boulders East Plant which produces Effluent in a quantity that is greater than 150,000 gpd, BCSC shall enter into good faith negotiations with User for the purchase by User of amounts of Effluent in excess of 150,000 gpd. The foregoing notwithstanding, nothing herein shall require BCSC to deliver Effluent to User in amounts in excess of 150,000 gpd.

(b) Quality of Effluent. The Effluent delivered by BCSC shall meet all applicable Federal, State of Arizona, and local health and safety standards for non-potable water supplied for turf irrigation and other exterior uses contemplated in this Agreement. BCSC makes no

representations or warranties with respect to any characteristic of the Effluent which is not specifically addressed by the applicable standards or the current re-use permit held by the User with respect to the Effluent. BCSC makes no representation or warranty that the Effluent is suitable for any purpose intended by User and use of the Effluent for any purpose is at the sole risk of the User.

(c) Metered Deliveries; Delivery Point. All deliveries of Effluent to User shall be metered. The meter is presently located immediately adjacent to the Boulders East Plant, which shall constitute the point of delivery. BCSC shall be responsible for the maintenance, repair and replacement of all facilities on BCSC's side of the meter as well as the meter, and User shall be responsible for the maintenance, repair and replacement of all facilities on User's side of the meter. The location of the meter may be changed by the mutual agreement of the parties. The User shall pay all costs associated with the maintenance, testing and certification of the meter.

(d) Service Interruptions by BCSC. BCSC shall use its reasonable efforts to provide a continuous level of service to User. In the event service is to be temporarily discontinued, BCSC shall promptly notify User of the particular circumstances and the estimated length of time during which service will be discontinued. BCSC shall make reasonable efforts to resume normal service as quickly as possible.

(e) Service Interruptions by User. In the event User is unable to accept deliveries of Effluent, User shall pay BCSC as if such Effluent had been delivered in accordance herewith and shall further pay BCSC the reasonable costs incurred by BCSC to dispose of such Effluent. In the event of a temporary interruption of the ability of User to accept Effluent, BCSC shall cooperate with User to minimize the amount of Effluent which cannot be accepted by BCSC. User shall make reasonable efforts to resume acceptance of deliveries of effluent as quickly as possible.

3. Charges for Effluent. The charge for all Effluent delivered to User hereunder shall

be determined from time to time by the Commission in connection with a general rate proceeding or similar proceeding in which all of BCSC's rates and charges for sewer utility service are determined in accordance with applicable laws and regulations. BCSC shall promptly notify User of all requests for modification of the charge for Effluent, and shall provide User, at User's cost, with a complete copy of all requests for rate increases or other rate adjustments, including the application, pre-filed testimony and supporting schedules and other exhibits. If the Commission at any time de-tariffs effluent service or ceases to consider such service a regulated service subject to the Commission's jurisdiction, the charge for Effluent delivered to User shall remain the tarified charge for at least one year, after which time BCSC may modify the charge for Effluent without Commission approval provided that BCSC and User shall negotiate such modification in good faith. All such charges shall be subject to the provisions of Paragraph 12(a), below.

4. Payment for Effluent Service. User shall be billed for and shall pay for Effluent on a quarterly basis based on the metered quantity of Effluent delivered to User during the preceding calendar quarter plus the amount of any Effluent which BCSC made available but User was unable to accept during such calendar quarter. All amounts payable by User to BCSC hereunder shall be due and payable within twenty-five (25) days of receipt of invoice, and any payment not received within such time shall be considered delinquent and be subject to any late payment penalty authorized by the Commission.

5. Changes to Effluent Standards. In the event that material changes are made to the re-use permit held by the User, or to an Aquifer Protection Permit, or to the quality standards applicable to Effluent used for turf irrigation and related purposes, BCSC shall notify User of those modifications to the facility from which the Effluent is provided or to any retainage features which are required to ensure that such new standards are met. At the option of the User, User shall (a) pay the reasonable costs of such modifications which are required to be made to the facility or retainage

feature for the purpose of complying with the new permit requirements or effluent re-use standards, or (b) terminate this agreement in accordance with Paragraph 12.

6. BCSC's Covenants. BCSC covenants and agrees that BCSC will:

- (a) Operate the Boulders East Plant and the related pipelines, pumps and facilities so as to allow the production and delivery of Effluent to User;
- (b) Maintain in good standing and renew when appropriate all permits and other regulatory approvals necessary for purposes of subparagraph (a);
- (c) Make such repairs, upgrades and improvements to the Boulders East Plant as may be necessary in connection with subparagraph (a); and
- (d) Not restrict, reduce or otherwise limit the quantity of Effluent produced by the Boulders East Plant or take any action that would reduce the plant's treatment capacity except as otherwise provided for in this Agreement.

The obligations of BCSC under this Paragraph shall terminate if physical conditions at the Boulders East Plant or any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the Boulders East Plant or render the operation of such plant uneconomic. If economic considerations, technical requirements or regulatory changes require BCSC to close or relocate the Boulders East Plant, BCSC will attempt, in good faith and to the extent technically feasible, to relocate the Boulders East Plant or construct a new wastewater treatment plant at a site that is as close as reasonably possible (taking into account the economics of such relocation or construction) to the Golf Courses. In the event the Boulders East Plant is relocated or a new facility constructed, User will be responsible for the costs of constructing additional pipelines and other facilities necessary to transport the Effluent from such new location to the Resort's delivery point, which upon request of BCSC shall be considered a contribution in aid of construction. BCSC shall be solely responsible for all costs and expenses resulting from the treatment of such pipelines and

facilities as contributions in aid of construction, including (without limitation) (i) costs relating to any easements for pipelines and facilities; (ii) costs relating to meter relocation; (iii) costs relating to maintenance and repair of the pipelines and facilities; and (iv) any income taxes. In the event the relocated or new facility has a larger capacity than the Boulders East Plant, User shall have the right to purchase a maximum amount of 150,000 gpd of effluent. For the purposes of this provision, the term "uneconomic" means that the costs and expenses relating to the treatment and delivery of Effluent, including applicable overheads, would exceed the market price for effluent used for golf course irrigation and similar purposes in Maricopa County.

7. User's Covenants. User covenants and agrees that User will:

- (a) Operate, repair and maintain its storage lakes, pipelines, and other facilities used in connection with the transportation and storage of Effluent provided hereunder in accordance with all applicable laws and regulations; and
- (b) Maintain in good standing and renew when appropriate all permits, including but not limited to Aquifer Protection Permits, and other approvals necessary for User to receive delivery of, store and utilize Effluent for turf irrigation, exterior landscape watering and similar uses.

8. Limitations on Effluent Use. User covenants and agrees that all Effluent delivered to User pursuant to this Agreement shall be used by User in connection with the Resort. User shall not make any changes in the nature of the use of the Effluent nor make any application for changes or amendments to the permit governing the use of the Effluent by the User, which changes or amendments may affect BCSC's operations, without the express written consent of BCSC. User shall not transport Effluent to any location outside of BCSC's certificated service territory, nor shall User sell or agree to sell Effluent to any other person or entity.

9. Indemnity.

(a) Indemnification of User. Subject to the limitations set out herein, BCSC shall indemnify, protect, defend (with legal counsel acceptable to User) and hold User harmless from, and upon demand shall pay or reimburse User for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by BCSC or caused by any act, neglect, fault or omission of BCSC or its agents, contractors, employees or servants. User shall not seek indemnification from BCSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of the use of Effluent by the User or resulting from any characteristic of the Effluent which is not specifically addressed in the standards which are applicable to the Effluent.

(b) Indemnification of BCSC. User shall indemnify, protect, defend (with legal counsel acceptable to BCSC) and hold BCSC harmless from, and upon demand shall pay or reimburse BCSC for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by User or caused by any act, neglect, fault or omission of User or its agents, contractors, employees or servants.

10. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, when such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy,

interference by civil authorities, passage of laws, orders of the court, delays in receipt of materials, or any other cause, where such cause is not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

11. Term. This Agreement shall remain in effect for a period of twenty (20) years from the date on page one of this Agreement, unless earlier terminated as provided under Paragraph 12, below. After the expiration of the initial twenty (20) year term, this Agreement shall be automatically renewed for successive five (5) year terms unless a Party provides written notice to the other Party of its election to terminate the Agreement, which notice shall be provided no less than one (1) year prior to the renewal of the Agreement.

12. Termination of Agreement.

(a) Rate Increases. In the event that the charge for Effluent delivered to User under this Agreement increases by more than twenty-five percent (25%) above the charge in effect at the time of any increase in the charge for Effluent or, in the alternative, increases by more than fifty percent (50%) within any five-year period, User, in its sole discretion, may terminate this Agreement by providing notice of its intent to terminate to BCSC on or before sixty (60) days from the date on which the increased charge becomes effective. If such notice is given, this Agreement, and all rights and obligations hereunder, shall terminate without further action one hundred twenty (120) days from the date such notice is delivered to BCSC. In the event that User elects not to exercise its right to terminate this Agreement following any increase in the charges for Effluent, User shall not waive its right to terminate based on future increases in charges.

(b) Termination for Breach. Either Party may terminate this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such

event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 14, below.

(c) Termination for Effluent Quality Changes. If User elects not to pay for those modifications to the East Boulders Plant necessary to ensure the Effluent continues to meet changes to the quality standards applicable to the Effluent, this Agreement may be terminated by BCSC upon 120 days written notice to User by BCSC.

13. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BCSC to: Trevor Hill
Suite 201, 1962 Canso Road,
Sidney, British Columbia,
Canada V8L 5V5

with a copy to: Algonquin Power Income Fund
c/o Peter Kampian
Algonquin Power Corporation, Inc.
#210, 2085 Hurontario Street
Mississauga, Ontario L5A 4G1

If to User to: Boulders Joint Venture
c/o Wyndham International, Inc.
1950 Stemmons Freeway, Suite 6001
Dallas, Texas 75207
Attention: Legal Department

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

14. Dispute Resolution.

(a) Good Faith Negotiations. For the purpose of dispute resolution, each Party

shall designate an officer or employee to act as its representative (hereinafter, "a Designated Representative"). A Party that believes a dispute exists under this Agreement will first refer the dispute to the Designated Representatives of the Parties for resolution. The Designated Representatives will personally meet and attempt in good faith to resolve the dispute. If the Designated Representatives cannot resolve the dispute within thirty (30) days, a Party that still believes a dispute requires resolution shall avail itself of the provisions of subparagraph (b), below.

(b) Arbitration. If a Party still believes a dispute requires resolution after following the procedures of subparagraph (a), that Party shall provide a detailed written notice of dispute to the other Party setting forth the nature of the dispute and requesting that the dispute be determined by means of arbitration. Immediately following such notice, the dispute shall be submitted for and settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court with jurisdiction.

(c) Other Remedies. The preceding subparagraphs are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all disputes that would traditionally be resolvable by a law court would be resolved under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the Parties will stay any further judicial proceeding pending arbitration of all underlying claims between the Parties. The Parties also recognize that the Commission may have primary jurisdiction over certain issues that may arise between and among the Parties that relate to the provision of public utility service. Accordingly, this paragraph is not intended to prohibit a Party from bringing any such issues to the Commission

for resolution or from taking any position at the Commission that would not be inconsistent with or barred by this Agreement or by collateral estoppel, res judicata or other issue or fact preclusion doctrines.

15. Attorneys' Fees. In the event either Party hereto employs legal counsel or brings a judicial action or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs from the other Party, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a judicial action for the purposes of this paragraph.

16. Resort Accommodations. From time to time, and subject to availability, User shall make accommodations at the Resort available to visiting representatives of BCSC at the best available corporate rate then offered by the Resort. BCSC's rights under this Paragraph shall be strictly limited to the use of accommodations for business purposes.

17. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

18. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement.

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall

be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

20. Governing Law; Severability. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. If a court or governmental agency with jurisdiction determines that any provision of this Agreement is unenforceable, illegal or contrary to any applicable law, regulation, regulatory order, or tariff, then such provision shall be severed from this Agreement. In such case, the remainder of this Agreement shall remain in effect if both Parties can legally, practicably, and commercially continue without the severed provision.

21. Construction. The terms and provisions of this Agreement represent the results of negotiations between BCSC and User, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BCSC and User each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement.

22. Integration. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BCSC and User with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BCSC and User with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the

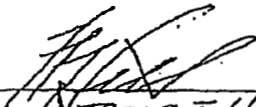
and provisions of this Agreement and the terms and provisions of any document, instrument, or other agreement executed in connection with or furtherance of this Agreement, the term, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

22. Headings and Captions. The headings and captions of this Agreement are for information only and are not intended to limit or define the meaning of any provision of this Agreement.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall be deemed an original, but all of which when taken together shall constitute one binding contract and instrument.

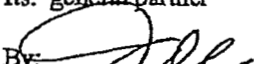
IN WITNESS WHEREOF, BOULDERS CAREFREE SEWER COMPANY and BOULDERS JOINT VENTURE, have caused this Agreement to be executed on their behalf by their authorized representatives as of the day and year first above written.

BOULDERS CAREFREE SEWER
CORPORATION, an Arizona corporation

By: 
TREVOR T. HILL
Its: PRESIDENT

BOULDERS JOINT VENTURE,
an Arizona general partnership

By: PAH GP, INC.
A Delaware corporation
Its: general partner

By: 
Fred J. Kleisner, President
John R. Bahlmann, Vice President

ORIGINAL

INTERVENTION

1 RYLEY CARLOCK & APPLEWHITE
2 One North Central Avenue, Suite 1200
3 Phoenix, Arizona 85004-4417
4 Telephone: 602/258-7701
5 Telecopier: 602/257-9582

6 Fredric D. Bellamy - 010767
7 Michele L. Van Quathem - 019185

8 SHERMAN & HOWARD
9 7047 East Greenway Parkway, Suite 155
10 Scottsdale, Arizona 85254
11 Telephone: 480/624-2717
12 Telecopier: 480/624-2029

13 Janet G. Betts - 006138

14 Attorneys for Proposed Intervenor Wind P1 Mortgage
15 Borrower, LLC, doing business as The Boulders Resort

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

13 GARY PIERCE, Chairman
14 SANDRA D. KENNEDY
15 PAUL NEWMAN
16 BOB STUMP
17 BRENDA BURNS

18 IN THE MATTER OF THE APPLICATION
19 OF BLACK MOUNTAIN SEWER
20 CORPORATION, FOR A
21 DETERMINATION OF THE FAIR VALUE
22 OF ITS UTILITY PLANT AND
23 PROPERTY AND FOR INCREASES IN
24 ITS RATES AND CHARGES BASED
25 THEREON FOR UTILITY SERVICE
26 BASED THEREON.

Docket No. SW-2361A-08-0609

THE BOULDERS RESORT'S MOTION TO INTERVENE

22 Pursuant to Rule 14-3-105 of the Rules of Practice and Procedure before the
23 Corporation Commission, Wind P1 Mortgage Borrower, LLC, doing business as The
24 Boulders Resort (hereinafter referred to as "The Boulders"), respectfully moves to
25 intervene in the above-captioned matter, Docket No. SW-02361A-05-0657. The
26 Boulders further requests that a hearing be scheduled to enable The Boulders to present
27 its legal points and authorities and evidence pertinent to the Commission's proceedings
28 in this matter.

1425009.1
7/6/11

Madden EXHIBIT 4
DATE 3-21-10
Kate E. Baumgarth, RPR, CR No. 50582

RECEIVED

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

JUL - 6 2011

DOCKETED BY

mm

INTRODUCTION

Due process requires that The Boulders be permitted to intervene and be heard in this rate surcharge proceeding for the following reasons:

(1) On June 15, 2011, a prior intervenor, the Boulders Homeowners' Association ("BHOA"), filed a purported "motion for plant closure order" that expressly seeks to nullify a binding private contract between The Boulders and Black Mountain Sewer Corporation ("Black Mountain Sewer") for the continued delivery of water critical to maintaining The Boulders' grounds. Therefore, The Boulders' legal interests are directly and explicitly implicated and threatened in this proceeding.

(2) No existing party in this rate surcharge proceeding has directly or indirectly represented The Boulders' interests, necessitating that The Boulders itself intervene to address and protect its legal interests. Moreover, as the BHOA's pending motion demonstrates, the existing parties are now actively making representations characterizing The Boulders' rights without its permission, express or implied, or even appropriate consultation.

(3) The Boulders' motion to intervene is timely because no further hearing has yet been scheduled, and The Boulders is promptly taking this action to protect its legal rights following the BHOA's filing of its motion. That motion fundamentally seeks to rewrite – and basically erase – a critical term of the agreement between the BHOA and Black Mountain Sewer regarding The Boulders' contract with Black Mountain Sewer. The BHOA's motion thus seeks to deprive The Boulders of important contractual rights without due process, and therefore cannot properly be considered without allowing The Boulders to appear and speak on its own behalf.

This proceeding is a rate proceeding in which two interested parties negotiated to allow Black Mountain Sewer to pass along a surcharge to the customers of Black Mountain Sewer in connection with an intended closure of Black Mountain Sewer's wastewater treatment plant near The Boulders. The parties neither negotiated with nor sought The Boulders' participation in that agreement, even though they included a

1 condition in the agreement expressly relating to The Boulders' contract with Black
2 Mountain Sewer.

3 That condition was that Black Mountain Sewer would negotiate to terminate its
4 contract with The Boulders at "no to little cost." ("Wastewater Treatment Plant Closure
5 Agreement" between BHOA and Black Mountain Sewer, dated Sept. 17, 2009, p.3, ¶
6 iv.) The agreement said absolutely nothing about how Black Mountain Sewer would
7 achieve such a negotiated termination consistent with Black Mountain Sewer's
8 continuing obligation to supply The Boulders with water for the next ten years.

9 A fair resolution consistent with the terms of the agreement, of course, would
10 require that Black Mountain Sewer make arrangements for The Boulders to receive
11 replacement water from some other supplier at a cost consistent with the terms of The
12 Boulders' contract with Black Mountain Sewer. In that event, The Boulders would be in
13 a position to be able to release Black Mountain Sewer from the remainder of its contract
14 with The Boulders, and Black Mountain Sewer presumably could move forward with its
15 intended closure plan, subject to its remaining conditions.

16 However, Black Mountain Sewer has failed to make any such arrangement, and
17 instead appears to be looking to the Commission to get Black Mountain Sewer off the
18 hook for its binding contractual commitment to The Boulders. That is an improper
19 request, and is patently inconsistent with the condition in the agreement previously
20 approved by the Commission. To consider rewriting that condition – and, in effect,
21 erasing it – would be legally improper without conducting a hearing to provide The
22 Boulders with a full and complete opportunity to be heard.

23 **The Boulders' Contract with Black Mountain Sewer**

24 This proceeding involves a request by Black Mountain Sewer for approval of a
25 rate surcharge to cover the costs associated with Black Mountain Sewer's intended
26 closure plan for the wastewater treatment plant that currently supplies The Boulders
27 with approximately 125,000 gallons per day of treated water. The Boulders and Black
28 Mountain Sewer entered into this water-supply contract in 2001, and ten years still

1 remain under the contract.¹ The Boulders has relied on this contract for this water for a
2 decade, and Black Mountain Sewer has made no arrangement to supply replacement
3 water between the date of its intended closure and 2021 when the contract expires.

4 In the 2001 contract, Black Mountain Sewer promised and covenanted to:

- 5 "(a) Operate the Boulders East Plant and the related
6 pipelines, pumps and facilities so as to allow the
7 production and delivery of Effluent to User;
8 (b) Maintain in good standing and renew when
9 appropriate all permits and other regulatory approvals
10 necessary for purposes of subparagraph (a);
11 (c) Make such repairs, upgrades and improvements to
12 the Boulders East Plant as may be necessary in
13 connection with subparagraph (a); and
14 (d) Not restrict, reduce or otherwise limit the quantity of
15 Effluent produced by the Boulders East Plant or take
16 any action that would reduce the plant's treatment
17 capacity except as otherwise provided for in this
18 Agreement."

19 Further underscoring The Boulders' right to rely on water from Black Mountain
20 Sewer, the contract also provides that:

21 "The obligations of [Black Mountain Sewer] under this
22 Paragraph shall terminate if physical conditions at the
23 Boulders East Plant or any laws, regulations, orders or other
24 regulatory requirements prevent or materially limit the
25 operation of the Boulders East Plant or render the operation
26 of such plant uneconomic. *If economic considerations,*

27
28 ¹ A copy of this contract was included as "Attachment A" (Hearing Exhibit BHOA-3) to the BHOA's motion, and
for convenience is also attached to this motion.

1 *technical requirements or regulatory changes require*
2 *[Black Mountain Sewer] to close or relocate the Boulders*
3 *East Plant, [Black Mountain Sewer] will attempt, in good*
4 *faith and to the extent technically feasible, to relocate the*
5 *Boulders East Plant or construct a new wastewater*
6 *treatment plant at a site that is as close as reasonably*
7 *possible (taking into account the economics of such*
8 *relocation or construction) to the Golf Courses."*

9 (Emphasis added.) The contract also specifies that, "[f]or purposes of this provision, the
10 term 'uneconomic' means that the costs and expenses relating to the treatment and
11 delivery of Effluent, including applicable overheads, would exceed the market price for
12 effluent used for golf course irrigation and similar purposes in Maricopa County."

13 In this manner the contract makes it clear that Black Mountain Sewer's obligation
14 to supply the required amount of water to The Boulders through 2021 would continue,
15 *even if the existing plant were closed*, unless a new plant could not supply the
16 replacement water for less than the market price. That condition makes perfect sense
17 because in that situation The Boulders presumably could purchase the replacement
18 water from an alternate supplier on the market for less than the cost of Black Mountain
19 Sewer's new plant. Otherwise, Black Mountain Sewer remains obligated to supply The
20 Boulders with water in the contractually specified amounts until the contract expires in
21 2021.

22 In failing to make any arrangements to replace The Boulders' water while
23 planning to shut down its plant, Black Mountain Sewer has not done anything to put
24 The Boulders in a position where it reasonably could agree to release Black Mountain
25 Sewer from its contractual obligations. Instead, it is patently obvious that Black
26 Mountain Sewer hopes to use this proceeding, with the BHOA acting as Black
27 Mountain Sewer's stalking horse, to try to get off the hook on a contract that Black
28 Mountain Sewer now evidently views as an inconvenience. During the last ten years

1 when The Boulders has relied on Black Mountain Sewer's guaranteed supply (for which
2 The Boulders had an unconditional obligation to pay), The Boulders has undoubtedly
3 missed opportunities to have secured the right to other water. Now, in 2011, with The
4 Boulders' options limited and far more expensive, Black Mountain Sewer seeks to walk
5 away from its obligations, leaving The Boulders high and dry. To allow such a result
6 would be a perversion of this rate proceeding.

7 Moreover, in operating its plant in a manner that has so upset the community,
8 including the BHOA's members, Black Mountain Sewer has failed to live up to the
9 promises of its covenants to The Boulders to "make such repairs, upgrades and
10 improvements . . . as may be necessary" . . . "to allow the production and delivery of
11 Effluent to User." In light of Black Mountain Sewer's disappointing conduct, on June 3,
12 2011, The Boulders formally invoked the dispute resolution provisions of the contract,
13 which require that the parties meet and confer in good faith to attempt to resolve their
14 dispute. Failing that, the contract provides for binding arbitration of certain legal
15 disputes if the negotiations fail to resolve them within 30 days.

16 **The BHOA's Motion**

17 The Boulders reserves the right to respond to the merits of BHOA's motion for
18 plant closure order upon the granting of this motion to intervene. However, in support
19 of this motion to intervene, The Boulders offers a few preliminary observations that
20 illustrate why The Boulders needs to be heard on the issues raised by the BHOA's
21 motion.

22 First, without consulting with The Boulders, and based on a letter that actually
23 starts a formal negotiation and dispute resolution process, the BHOA simply states that
24 The Boulders and Black Mountain Sewer's "negotiations have reached an impasse."
25 (BHOA's motion for plant closure order at p.1, l.22). The BHOA then asserts that the
26 Commission should order Black Mountain Sewer to close its plant based on the
27 "apparent impossibility of this condition [requiring The Boulders to agree to the terms
28 of terminating the contract with Black Mountain Sewer] to be satisfied" (*Id.*, at

1 1.22-23). The BHOA is making these remarkable assertions without firsthand
2 knowledge and without even having allowed The Boulders and Black Mountain Sewer
3 time to engage in the dispute resolution process required of the parties under their
4 contract. The Boulders clearly needs to be allowed to appear to speak for itself
5 regarding these circumstances.

6 Second, the BHOA characterizes the nature of the proceedings and the
7 Commission's prior decision as if it had been a fully adjudicated matter regarding a
8 plant closure order, thus rendering a hearing unnecessary. However, the Commission
9 approved a proposed settlement agreement, which contained a number of specified
10 conditions (which as the BHOA's motion itself says have not been met), under which
11 the Commission approved a rate surcharge. Given the nature of the *settlement*
12 *agreement* between only two of several necessary parties, it cannot be assumed that
13 matters that the parties merely agreed to between themselves can somehow qualify as
14 factual findings binding on third parties, such as The Boulders, who were not present
15 and did not participate in that agreement.

16 Third, the BHOA characterizes the nature of the Commission's legal authority in
17 terms that go well beyond the actual record in the case. The Commission noted the
18 unique circumstances of the case in approving a settlement agreement between the
19 BHOA and Black Mountain Sewer, and approving a conditional rate change. While the
20 Commission has noted its inherent authority to regulate a utility's operations, including
21 requiring improvements in the interest of protecting the public, there has not been a
22 binding and definitive ruling on the issue of the Commission's authority to order a
23 closure outside the context of a proposed settlement agreement seeking a rate increase.
24 Now the BHOA seeks, in effect, to change the settlement agreement, even though the
25 Commission has not heard any evidence regarding the elimination of the condition that
26 the BHOA seeks.

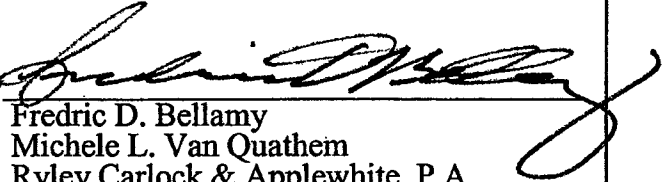
27 Fourth, the BHOA has completely ignored the serious implications of its
28 argument asking the Commission to interfere with the obligations under a private

1 contract. While the Commission unquestionably has the authority to regulate utility
2 rates, the BHOA's proposed remedy effectively seeks to have the Commission abrogate
3 an entire private contract. Such a remedy raises serious constitutional as well as
4 statutory issues relating to the impairment of contracts. No party has yet to step forward
5 to address these important legal issues, as The Boulders finds it must now do.

6 For all the foregoing reasons, The Boulders respectfully requests that it be
7 permitted to intervene as a party in these proceedings, and further requests that a
8 hearing be scheduled on all matters relating to the pending motion for plant closure.

9 DATED this 6th day of July, 2011.

10 RYLEY CARLOCK & APPLEWHITE

11
12 By 
13 Fredric D. Bellamy
14 Michele L. Van Quathem
15 Ryley Carlock & Applewhite, P.A.
16 One North Central Avenue, Suite 1200
17 Phoenix, Arizona 85004-4417

18 Janet G. Betts
19 Sherman & Howard
20 7047 East Greeway Parkway, Suite 155
21 Scottsdale, Arizona 85254

22 Attorneys for The Boulders

23
24 ORIGINAL and 13 copies of the foregoing
25 filed this 6TH day of July, 2011, with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 W. Washington
Phoenix, Arizona 85007

COPIES of the foregoing HAND-DELIVERED
this 6th day of July, 2011, to:

Commissioner Gary Pierce, Chairman
Commissioner Paul Newman
Commissioner Sandra D. Kennedy
Commissioner Bob Stump
Commissioner Brenda Burns
1200 West Washington Street
Phoenix, Arizona 85007

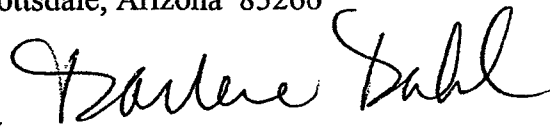
1 Janice Alward, Chief Counsel
Legal Division
2 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
3 Phoenix, Arizona 85007
4 Steve Olea, Director
Utilities Division
5 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
6 Phoenix, Arizona 85007
7 Lyn Farmer
Utilities Division
8 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
9 Phoenix, Arizona 85007
10 COPIES of the foregoing MAILED
11 this 6th day of July, 2011, to:
12 Greg Sorensen
ALGONQUIN WATER SERVICES
13 12725 W. Indian School Road, Suite D-101
Avondale, Arizona 85392
14 Jay L. Shapiro (jshapiro@fclaw.com)
15 Norman D. James (njames@fclaw.com)
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16 3003 N. Central Avenue, Suite 2600
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17 Attorneys for Black Mountain Sewer Corporation
18 Michael Wright
SHERMAN & HOWARD, LLC
19 7047 E. Greenway Parkway, Suite 155
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21 and
22 201 E. Washington St., Suite 800
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23 Attorneys for Town of Carefree
24 Jodi Jerich, Director
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10 M.M. Schirtziner
11 34773 N. Indian Camp Trail
12 Scottsdale, Arizona 85266

13 By 
14 _____
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EFFLUENT DELIVERY AGREEMENT

THIS EFFLUENT DELIVERY AGREEMENT (this "Agreement") is made this ____ day of March, 2001 between THE BOULDERS CAREFREE SEWER CORPORATION, an Arizona corporation ("BCSC"), and BOULDERS JOINT VENTURE, an Arizona general partnership ("User"), sometimes referred to herein as a "Party" or collectively as the "Parties," for the purposes and consideration set forth hereinafter.

RECITALS:

A. BCSC owns and operates certain wastewater collection and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "Commission") authorizing BCSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale, Arizona, including the sale of treated effluent ("Effluent") resulting from the operation of BCSC's treatment facilities.

B. User owns and operates a destination resort in north Scottsdale commonly known as The Boulders Resort and Club ("the Resort"). The Resort includes a hotel, clubhouse, pool, tennis courts, various landscaped areas and two 18-hole championship golf courses (the "Golf Courses"), and is located within BCSC's certificated service territory.

C. At the present time, BCSC operates a single wastewater treatment plant known as the Boulders East Plant. This treatment plant currently has a permitted capacity of 120,000 gallons per day ("gpd"). BCSC intends to seek approval to increase the treatment plant's permitted capacity to 150,000 gpd. The remainder of BCSC's wastewater is delivered to the City of Scottsdale for treatment.

D. BCSC currently delivers all of the Effluent produced by the Boulders East Plant to the Resort, pursuant to that certain Agreement, dated March, 18, 1986, as amended by that certain First Amendment to Agreement, dated March 18, 1996. The Resort utilizes the Effluent for

irrigation and maintenance of the turf, trees, shrubs and other landscaping at the Golf Courses, for the filling and refilling of storage reservoirs at the Golf Courses, and for related exterior uses.

E. The Parties desire to enter into a new agreement in order to modify certain terms and conditions, which shall supersede and replace the existing agreement, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

AGREEMENTS:

1. Purchase and Sale of Effluent. BCSC agrees to sell and deliver and User agrees to purchase and accept delivery of all Effluent generated by the Boulders East Plant subject to the terms and conditions set forth hereinafter.

2. Service and Delivery of Effluent. BCSC shall deliver and User shall accept Effluent as follows:

(a) Quantity of Effluent. BCSC shall deliver to the Resort all Effluent generated by the operation of the Boulders East Plant (or a new wastewater treatment facility which may be constructed by BCSC as contemplated herein). In the event the treatment capacity of the Boulders East Plant is increased to a capacity greater than 150,000 gpd, or a new wastewater treatment facility is constructed by BCSC to replace the Boulders East Plant which produces Effluent in a quantity that is greater than 150,000 gpd, BCSC shall enter into good faith negotiations with User for the purchase by User of amounts of Effluent in excess of 150,000 gpd. The foregoing notwithstanding, nothing herein shall require BCSC to deliver Effluent to User in amounts in excess of 150,000 gpd.

(b) Quality of Effluent. The Effluent delivered by BCSC shall meet all applicable Federal, State of Arizona, and local health and safety standards for non-potable water supplied for turf irrigation and other exterior uses contemplated in this Agreement. BCSC makes no

representations or warranties with respect to any characteristic of the Effluent which is not specifically addressed by the applicable standards or the current re-use permit held by the User with respect to the Effluent. BCSC makes no representation or warranty that the Effluent is suitable for any purpose intended by User and use of the Effluent for any purpose is at the sole risk of the User.

(c) Metered Deliveries; Delivery Point. All deliveries of Effluent to User shall be metered. The meter is presently located immediately adjacent to the Boulders East Plant, which shall constitute the point of delivery. BCSC shall be responsible for the maintenance, repair and replacement of all facilities on BCSC's side of the meter as well as the meter, and User shall be responsible for the maintenance, repair and replacement of all facilities on User's side of the meter. The location of the meter may be changed by the mutual agreement of the parties. The User shall pay all costs associated with the maintenance, testing and certification of the meter.

(d) Service Interruptions by BCSC. BCSC shall use its reasonable efforts to provide a continuous level of service to User. In the event service is to be temporarily discontinued, BCSC shall promptly notify User of the particular circumstances and the estimated length of time during which service will be discontinued. BCSC shall make reasonable efforts to resume normal service as quickly as possible.

(e) Service Interruptions by User. In the event User is unable to accept deliveries of Effluent, User shall pay BCSC as if such Effluent had been delivered in accordance herewith and shall further pay BCSC the reasonable costs incurred by BCSC to dispose of such Effluent. In the event of a temporary interruption of the ability of User to accept Effluent, BCSC shall cooperate with User to minimize the amount of Effluent which cannot be accepted by BCSC. User shall make reasonable efforts to resume acceptance of deliveries of effluent as quickly as possible.

3. Charges for Effluent. The charge for all Effluent delivered to User hereunder shall

be determined from time to time by the Commission in connection with a general rate proceeding or similar proceeding in which all of BCSC's rates and charges for sewer utility service are determined in accordance with applicable laws and regulations. BCSC shall promptly notify User of all requests for modification of the charge for Effluent, and shall provide User, at User's cost, with a complete copy of all requests for rate increases or other rate adjustments, including the application, pre-filed testimony and supporting schedules and other exhibits. If the Commission at any time de-tariffs effluent service or ceases to consider such service a regulated service subject to the Commission's jurisdiction, the charge for Effluent delivered to User shall remain the tariffed charge for at least one year, after which time BCSC may modify the charge for Effluent without Commission approval provided that BCSC and User shall negotiate such modification in good faith. All such charges shall be subject to the provisions of Paragraph 12(a), below.

4. Payment for Effluent Service. User shall be billed for and shall pay for Effluent on a quarterly basis based on the metered quantity of Effluent delivered to User during the preceding calendar quarter plus the amount of any Effluent which BCSC made available but User was unable to accept during such calendar quarter. All amounts payable by User to BCSC hereunder shall be due and payable within twenty-five (25) days of receipt of invoice, and any payment not received within such time shall be considered delinquent and be subject to any late payment penalty authorized by the Commission.

5. Changes to Effluent Standards. In the event that material changes are made to the re-use permit held by the User, or to an Aquifer Protection Permit, or to the quality standards applicable to Effluent used for turf irrigation and related purposes, BCSC shall notify User of those modifications to the facility from which the Effluent is provided or to any retainage features which are required to ensure that such new standards are met. At the option of the User, User shall (a) pay the reasonable costs of such modifications which are required to be made to the facility or retainage

feature for the purpose of complying with the new permit requirements or effluent re-use standards, or (b) terminate this agreement in accordance with Paragraph 12.

6. BCSC's Covenants. BCSC covenants and agrees that BCSC will:

- (a) Operate the Boulders East Plant and the related pipelines, pumps and facilities so as to allow the production and delivery of Effluent to User;
- (b) Maintain in good standing and renew when appropriate all permits and other regulatory approvals necessary for purposes of subparagraph (a);
- (c) Make such repairs, upgrades and improvements to the Boulders East Plant as may be necessary in connection with subparagraph (a); and
- (d) Not restrict, reduce or otherwise limit the quantity of Effluent produced by the Boulders East Plant or take any action that would reduce the plant's treatment capacity except as otherwise provided for in this Agreement.

The obligations of BCSC under this Paragraph shall terminate if physical conditions at the Boulders East Plant or any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the Boulders East Plant or render the operation of such plant uneconomic. If economic considerations, technical requirements or regulatory changes require BCSC to close or relocate the Boulders East Plant, BCSC will attempt, in good faith and to the extent technically feasible, to relocate the Boulders East Plant or construct a new wastewater treatment plant at a site that is as close as reasonably possible (taking into account the economics of such relocation or construction) to the Golf Courses. In the event the Boulders East Plant is relocated or a new facility constructed, User will be responsible for the costs of constructing additional pipelines and other facilities necessary to transport the Effluent from such new location to the Resort's delivery point, which upon request of BCSC shall be considered a contribution in aid of construction. BCSC shall be solely responsible for all costs and expenses resulting from the treatment of such pipelines and

facilities as contributions in aid of construction, including (without limitation) (i) costs relating to any easements for pipelines and facilities; (ii) costs relating to meter relocation; (iii) costs relating to maintenance and repair of the pipelines and facilities; and (iv) any income taxes. In the event the relocated or new facility has a larger capacity than the Boulders East Plant, User shall have the right to purchase a maximum amount of 150,000 gpd of effluent. For the purposes of this provision, the term "uneconomic" means that the costs and expenses relating to the treatment and delivery of Effluent, including applicable overheads, would exceed the market price for effluent used for golf course irrigation and similar purposes in Maricopa County.

7. User's Covenants. User covenants and agrees that User will:

- (a) Operate, repair and maintain its storage lakes, pipelines, and other facilities used in connection with the transportation and storage of Effluent provided hereunder in accordance with all applicable laws and regulations; and
- (b) Maintain in good standing and renew when appropriate all permits, including but not limited to Aquifer Protection Permits, and other approvals necessary for User to receive delivery of, store and utilize Effluent for turf irrigation, exterior landscape watering and similar uses.

8. Limitations on Effluent Use. User covenants and agrees that all Effluent delivered to User pursuant to this Agreement shall be used by User in connection with the Resort. User shall not make any changes in the nature of the use of the Effluent nor make any application for changes or amendments to the permit governing the use of the Effluent by the User, which changes or amendments may affect BCSC's operations, without the express written consent of BCSC. User shall not transport Effluent to any location outside of BCSC's certificated service territory, nor shall User sell or agree to sell Effluent to any other person or entity.

9. Indemnity.

(a) Indemnification of User. Subject to the limitations set out herein, BCSC shall indemnify, protect, defend (with legal counsel acceptable to User) and hold User harmless from, and upon demand shall pay or reimburse User for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by BCSC or caused by any act, neglect, fault or omission of BCSC or its agents, contractors, employees or servants. User shall not seek indemnification from BCSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of the use of Effluent by the User or resulting from any characteristic of the Effluent which is not specifically addressed in the standards which are applicable to the Effluent.

(b) Indemnification of BCSC. User shall indemnify, protect, defend (with legal counsel acceptable to BCSC) and hold BCSC harmless from, and upon demand shall pay or reimburse BCSC for, any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines and liabilities (including, without limitation, reasonable attorneys' fees and court costs) arising out of any breach or default in the performance of this Agreement by User or caused by any act, neglect, fault or omission of User or its agents, contractors, employees or servants.

10. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, when such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy,

interference by civil authorities, passage of laws, orders of the court, delays in receipt of materials, or any other cause, where such cause is not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

11. Term. This Agreement shall remain in effect for a period of twenty (20) years from the date on page one of this Agreement, unless earlier terminated as provided under Paragraph 12, below. After the expiration of the initial twenty (20) year term, this Agreement shall be automatically renewed for successive five (5) year terms unless a Party provides written notice to the other Party of its election to terminate the Agreement, which notice shall be provided no less than one (1) year prior to the renewal of the Agreement.

12. Termination of Agreement.

(a) Rate Increases. In the event that the charge for Effluent delivered to User under this Agreement increases by more than twenty-five percent (25%) above the charge in effect at the time of any increase in the charge for Effluent or, in the alternative, increases by more than fifty percent (50%) within any five-year period, User, in its sole discretion, may terminate this Agreement by providing notice of its intent to terminate to BCSC on or before sixty (60) days from the date on which the increased charge becomes effective. If such notice is given, this Agreement, and all rights and obligations hereunder, shall terminate without further action one hundred twenty (120) days from the date such notice is delivered to BCSC. In the event that User elects not to exercise its right to terminate this Agreement following any increase in the charges for Effluent, User shall not waive its right to terminate based on future increases in charges.

(b) Termination for Breach. Either Party may terminate this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such

event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 14, below.

(c) Termination for Effluent Quality Changes. If User elects not to pay for those modifications to the East Boulders Plant necessary to ensure the Effluent continues to meet changes to the quality standards applicable to the Effluent, this Agreement may be terminated by BCSC upon 120 days written notice to User by BCSC.

13. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BCSC to: Trevor Hill
Suite 201, 1962 Canso Road,
Sidney, British Columbia,
Canada V8L 5V5

with a copy to: Algonquin Power Income Fund
c/o Peter Kampian
Algonquin Power Corporation, Inc.
#210, 2085 Hurontario Street
Mississauga, Ontario L5A 4G1

If to User to: Boulders Joint Venture
c/o Wyndham International, Inc.
1950 Stemmons Freeway, Suite 6001
Dallas, Texas 75207
Attention: Legal Department

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

14. Dispute Resolution.

(a) Good Faith Negotiations. For the purpose of dispute resolution, each Party

shall designate an officer or employee to act as its representative (hereinafter, "a Designated Representative"). A Party that believes a dispute exists under this Agreement will first refer the dispute to the Designated Representatives of the Parties for resolution. The Designated Representatives will personally meet and attempt in good faith to resolve the dispute. If the Designated Representatives cannot resolve the dispute within thirty (30) days, a Party that still believes a dispute requires resolution shall avail itself of the provisions of subparagraph (b), below.

(b) Arbitration. If a Party still believes a dispute requires resolution after following the procedures of subparagraph (a), that Party shall provide a detailed written notice of dispute to the other Party setting forth the nature of the dispute and requesting that the dispute be determined by means of arbitration. Immediately following such notice, the dispute shall be submitted for and settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court with jurisdiction.

(c) Other Remedies. The preceding subparagraphs are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all disputes that would traditionally be resolvable by a law court would be resolved under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the Parties will stay any further judicial proceeding pending arbitration of all underlying claims between the Parties. The Parties also recognize that the Commission may have primary jurisdiction over certain issues that may arise between and among the Parties that relate to the provision of public utility service. Accordingly, this paragraph is not intended to prohibit a Party from bringing any such issues to the Commission

for resolution or from taking any position at the Commission that would not be inconsistent with or barred by this Agreement or by collateral estoppel, res judicata or other issue or fact preclusion doctrines.

15. Attorneys' Fees. In the event either Party hereto employs legal counsel or brings a judicial action or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs from the other Party, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a judicial action for the purposes of this paragraph.

16. Resort Accommodations. From time to time, and subject to availability, User shall make accommodations at the Resort available to visiting representatives of BCSC at the best available corporate rate then offered by the Resort. BCSC's rights under this Paragraph shall be strictly limited to the use of accommodations for business purposes.

17. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

18. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement.

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall

be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

20. Governing Law; Severability. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. If a court or governmental agency with jurisdiction determines that any provision of this Agreement is unenforceable, illegal or contrary to any applicable law, regulation, regulatory order, or tariff, then such provision shall be severed from this Agreement. In such case, the remainder of this Agreement shall remain in effect if both Parties can legally, practicably, and commercially continue without the severed provision.

21. Construction. The terms and provisions of this Agreement represent the results of negotiations between BCSC and User, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BCSC and User each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement.

22. Integration. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BCSC and User with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BCSC and User with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the

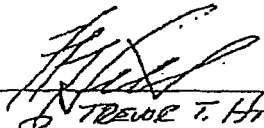
and provisions of this Agreement and the terms and provisions of any document, instrument, or other agreement executed in connection with or furtherance of this Agreement, the term, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

Headings and Captions. The headings and captions of this Agreement are for information only and are not intended to limit or define the meaning of any provision of this Agreement.

Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall be deemed an original, but all of which when taken together shall constitute one binding contract and instrument.

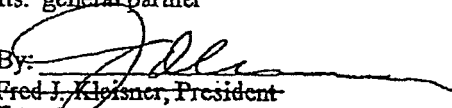
IN WITNESS WHEREOF, BOULDERS CAREFREE SEWER COMPANY and BOULDERS JOINT VENTURE, have caused this Agreement to be executed on their behalf by their authorized representatives as of the day and year first above written.

BOULDERS CAREFREE SEWER
CORPORATION, an Arizona corporation

By: 
Its: ANDREW T. HILL,
PRESIDENT

BOULDERS JOINT VENTURE,
an Arizona general partnership

By: PAH GP, INC.
A Delaware corporation
Its: general partner

By: 
Fred J. Kleisner, President
John R. Bohlmann, Vice President

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE, Chairman

4 PAUL NEWMAN

5 SANDRA D. KENNEDY

6 BOB STUMP

7 BRENDA BURNS

8 IN THE MATTER OF THE
9 APPLICATION OF BLACK MOUNTAIN
10 SEWER CORPORATION, AN ARIZONA
11 CORPORATION, FOR A
12 DETERMINATION OF THE FAIR
13 VALUE OF ITS UTILITY PLANT AND
14 PROPERTY AND FOR INCREASES IN
15 ITS RATES AND CHARGES FOR
16 UTILITY SERVICE BASED THEREON.

NO. DOCKET NO. SW-02361A-08-0609

STIPULATION OF FACTS

12 The Boulders Homeowners' Association ("BHOA") and Black Mountain Sewer
13 Corporation ("Black Mountain" or "Company") (collectively, the "Stipulating Parties")
14 by and through undersigned counsel, submit the following Stipulation of Facts. The
15 Stipulating Parties believe that the facts included herein are undisputed. This Stipulation
16 of Facts is being offered in lieu of testimony from BHOA.

17 1. In the midst of the Boulders residential community sits the Boulders
18 Wastewater Treatment Plant (the "Treatment Plant") that was originally constructed in
19 1969.

20 2. The Treatment Plant sits less than 100 feet from three homes, and within
21 1,000 feet of the Treatment Plant there are 200-300 homes and dining and conference
22 facilities of the Resort.

23 3. The Treatment Plant is permitted to treat 120,000 gallons per day of
24 wastewater.

25 4. The Treatment Plant treats about 20 percent of the Company's total
26 wastewater flows.

1 5. Complaints have been received that odors from the Treatment Plant are
2 noticeable by and objectionable to Boulders residents. Such residents have also
3 complained that odors from the Treatment Plant can be irritating and sometimes interfere
4 with residents' opportunity to leave their windows open to enjoy fresh air in the
5 immediate vicinity of the facility. Residents of the Boulders have complained to the
6 Boulders' community manager about odors from the Treatment Plant.

7 6. Complaints from residents regarding odors from the Treatment Plant appear
8 more frequent from October through April.

9 7. Since Decision No. 71865 was issued, the Company has received and
10 logged 23 odor complaints from customers (including a lawsuit filed in Maricopa County
11 Superior Court by a resident living adjacent to the Treatment Plant).

12 8. A portion of the north Boulders golf course is adjacent to the Treatment
13 Plant. Golfers playing the north Boulders golf course have also complained at times of
14 noticeable odors as they pass by the Treatment Plant.

15 9. At times, noises from the operation of the Treatment Plant are noticeable
16 from homes within approximately 400 feet of the Treatment Plant.

17 10. There is periodic traffic (service vehicles, pumper trucks, sub-contractor
18 vehicle parking, dumpsters, etc.) in the Boulders community associated with the
19 Treatment Plant's operations.

20 11. The Treatment Plant is operated in full compliance with all applicable law
21 and industry standards. In addition, BMSC has taken steps to minimize odors and noises
22 from operation of the facility, including, among many other improvements, the
23 installation of an odor-scrubber.

24 12. It is not feasible to completely eliminate odor and noise from the operation
25 of the Treatment Plant.

1 COPY of the foregoing mailed/emailed
2 this 6th day of March, 2012 to:

3 Jay L. Shapiro
4 Fennemore Craig, PC
5 3003 N. Central Ave., Suite 2600
6 Phoenix, Arizona 85012-2913
7 Attorneys for Black Mountain Sewer Corporation

8 Jodi Jerich, Director
9 Residential Utility Consumer Office
10 1110 W. Washington St., Suite 220
11 Phoenix, Arizona 85007-2958

12 Michael W. Wright
13 Sherman & Howard, LLC
14 7033 East Greenway Parkway, Suite 250
15 Scottsdale, Arizona 85254
16 Attorneys for Town of Carefree

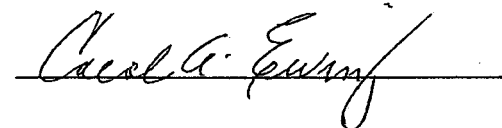
17 Michelle L. Wood
18 Residential Utility Consumer Office
19 1110 W. Washington, Suite 220
20 Phoenix, Arizona 85007

21 Fredric D. Bellamy
22 Michele L. Van Quathem
23 Ryley Carlock & Applewhite, P.A.
24 One North Central Avenue, Suite 1200
25 Phoenix, Arizona 85004-4417
26 Attorneys for Wind P1 Mortgage Borrower,
LLC, dba The Boulders Resort

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Carefree, Arizona 85377

M.M. Schirtzinger
34773 N. Indian Camp Trail
Scottsdale, Arizona 85266



WIND P1 MORTGAGE BORROWER, L.L.C.,
d/b/a THE BOULDERS RESORT AND GOLDEN DOOR SPA
DOCKET NO. SW-02361A-08-0609

**UPDATED RESPONSE TO THIRD SET OF DATA REQUESTS BY
BLACK MOUNTAIN SEWER CORPORATION**

May 7, 2012

Response provided by: Wind P1 Mortgage Borrower, LLC, dba The Boulders
Resort and Golden Door Spa ("The Boulders Resort")

Address: c/o Michele Van Quathem
Ryley Carlock & Applewhite
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004

Q3.1. Please provide copies of all documents provided to The Boulders by Mr. Tom
Lacey of Fluid Solutions.

RESPONSE:

OBJECTION. This question requests information protected by the attorney-client privilege and the work product protection rule. Without waiving this objection, Mike Lacey of Fluid Solutions was hired by attorneys for the Resort, in anticipation of litigation regarding the subject matter of this proceeding and a related ongoing Superior Court matter. Mr. Lacey provided the Resort's attorneys with a report dated April 11, 2011, and followed up with an e-mail with attached report to the attorneys on or about May 12, 2011. The attorneys who hired Mr. Lacey have since moved to another firm, and the original firm has closed its Phoenix office. We are working to obtain privilege log information, if still available, regarding any e-mails Mr. Lacey may have sent to the now-closed office.

UPDATE: SEE ATTACHED PRIVILEGE LOG



Privilege Log

Date	Description	Basis for Privilege
05/23/11	Email from M. Lacey to D. Kelling re Boulders News	Work Product Attorney-Client
05/12/11	Email chain between M. Lacey and D. Kelling, T. McCahan, and S. Madden re Friday Schedule	Work Product Attorney-Client
05/12/11	Email chain between M. Lacey and D. Kelling, T. McCahan, and S. Madden re Friday Schedule	Work Product Attorney-Client
05/12/11	Email chain between M. Lacey and D. Kelling, re Friday Schedule	Work Product Attorney-Client
05/11/11	Email chain between M. Lacey and D. Kelling, re Friday Schedule	Work Product Attorney Client
05/11/11	Email chain between M. Lacey and D. Kelling, re Friday Schedule	Work Product Attorney Client
05/09/11	Email chain between M. Lacey and D. Kelling, T. McCahan, and S. Madden re Friday Schedule	Work Product Attorney Client
05/09/11	Email chain between M. Lacey and D. Kelling, T. McCahan, and S. Madden re Friday Schedule	Work Product Attorney Client
05/04/11	Email chain between M. Lacey and D. Kelling re BMSC	Work Product Attorney Client
05/03/11	Email from M. Lacey to D. Kelling re Boulders	Work Product
05/02/11	Email from M. Lacey to S. Madden and D. Kelling re Additional RWDS Agreement	Work Product Attorney Client
05/02/11	Email from M. Lacey to D. Kelling, T. McCahan, D. Hunter and S. Madden re Partial Follow up from Friday's meeting	Work Product Attorney Client
05/02/11	Email from M. Lacey to S. Madden and D. Kelling re Additional RWDS Agreement	Work Product Attorney Client
04/27/11	Email chain between M. Lacey and D. Kelling, T. McCahan, D. Hunter and S. Madden re Meeting Friday	Work Product Attorney Client
04/26/11	Email from M. Lacey to D. Kelling re Question	Work Product Attorney Client
04/26/11	Email chain between M. Lacey and D. Kelling re water supply option memo	Work Product Attorney Client
04/26/11	Email chain between M. Lacey, T. McCahan, and D. Kelling re CWC R-R option	Work Product Attorney Client
04/26/11	Email chain between M. Lacey, T. McCahan, and D. Kelling re CWC R-R option	Work Product Attorney Client
04/26/11	Email chain between M. Lacey and D. Kelling re Water supply option memo	Work Product Attorney Client
04/26/11	Email chain between M. Lacey and D. Kelling re Water supply option memo	Work Product Attorney Client

Date	Description	Basis for Privilege
04/25/11	Email chain between M. Lacey and D. Kelling re Water supply option memo	Work Product Attorney Client
04/21/11	Email from M. Lacey to M. McCahan and D. Kelling re Water supply option memo	Work Product Attorney Client
04/13/11	Email chain between M. Lacey and D. Kelling re status	Work Product Attorney Client
03/25/11	Email chain between M. Lacey and D. Kelling	Work Product Attorney Client
03/23/11	Email chain between M. Lacey and D. Kelling re V-card	Work Product Attorney Client
03/23/11	Email chain between M. Lacey and D. Kelling re V-card	Work Product Attorney Client
03/10/11	Email chain between M. Lacey and D. Kelling re Boulders Proposal	Work Product Attorney Client
03/09/11	Email from M. Lacey to D. Kelling re Boulders Proposal	Work Product Attorney Client
03/08/11	Email chain between M. Lacey and D. Kelling re Boulders Resort Proposal	Work Product Attorney Client
03/08/11	Email from M. Lacey to D. Kelling re V-Card	Attorney Client